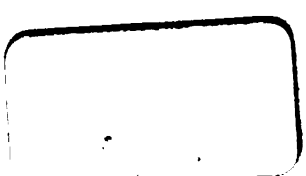

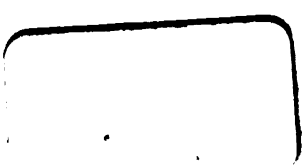

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

OF THE

HOUSE OF REPRESENTATIVES

ON

H. R. 15846,

RELATING TO BILLS OF LADING.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
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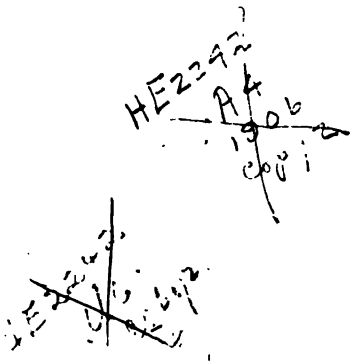

BILLS OF LADING.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Tuesday, March 27, 1906.

The CHAIRMAN. The subject for consideration this morning is H. R. 15846, relating to bills of lading.

STATEMENT OF WILLIAM INGLE, OF BALTIMORE.

Mr. TOWNSEND. Where is your home?

Mr. INGLE. Baltimore. I am cashier of the Merchants' National Bank.

Mr. TOWNSEND. Is there an association of bankers interested in this bill?

Mr. INGLE. Yes, sir. At the last annual convention of the American Bankers' Association, held in this city in October I believe, there was adopted a resolution authorizing the president of that association to appoint a committee to confer with the shippers and carriers and these other parties interested in this matter with the idea of perfecting a document which would be entirely acceptable to everyone. We attempted to frame the matter up and we appointed five gentlemen, four of whom are present this morning.

Mr. TOWNSEND. Who constitutes that committee?

Mr. INGLE. The committee is headed by Mr. Lewis E. Ferry, president of the National Exchange Bank, and the members are William Livingston, president of the Dime Savings Bank of Detroit, and, incidentally, president of the Lake Carriers' Association, one of the largest grain carriers in the country, I believe; F. O. Wetmore, of the National Bank of Chicago, which bank, I assume, handles more paper of this character than any other bank in the United States; James Lewis, cashier of the National Bank of Commerce, of St. Louis, which, in its particular section, dominates the banking interests, I imagine; and myself. My bank handles this class of paper for grain and cotton, mostly from the South.

Mr. TOWNSEND. State as briefly as you can what you wish to about this legislation.

Mr. BURKE. You have stated that you drafted a bill that was satisfactory to all interests concerned. What do you mean by that?

Mr. INGLE. That I had drafted a bill which was satisfactory; no, sir. I said that committee was appointed for the purpose of consulting with these various interests of the bankers, carriers, and shippers so that these three interests, including ours, could get together and perfect some sort of legislation or agreement which would satisfy the demands of the situation.

Mr. BURKE. The object of my question was, knowing but little about this proposition, to ascertain whether you were speaking from the standpoint of the bankers or whether there was an understanding between the shippers, the carriers, and the bankers upon which they could agree.

Mr. INGLE. It was hardly to determine with reference to the respective interests, because they are all commingled. Their interests are identical with the interests of the shipper, because the moment the security is questioned, that moment the bank must stop accepting those papers as collateral, and at that moment the shippers are practically driven out of business, all excepting the monopolist or those having capital enough to take care of the business independently of the shippers.

Mr. RICHARDSON. Is there any association of carriers aiding in this legislation who are here to be heard?

Mr. INGLE. It is an effort at this juncture to reach a determination if possible. After our committee was appointed we had knowledge that there was to be held, in Lakewood, N. J., a conference between two committees, one on the part of the carriers and one on the part of the shippers. We went to that committee and found that it was working under a very excellent rule from its own point of view. They had mutually agreed among themselves that no other parties should be admitted to the conference until they had thrashed it out, and we had restricted our discussion entirely to two points covered by the present bill of lading. At first the carriers and shippers were unable to agree and it looked hopeless. We thought that probably they would not get together at all.

We afterwards had a conference in New York with the uniform bill of lading carriers who have charge of all matters relating to bills of lading in what is known as the official classification territory, being the territory north of the Potomac and Ohio rivers and east of the Mississippi River. It dominates the railroad interests of the country. We found the gentlemen very polite and pleasant, and they gave us assurances of a certain character, but when we talked the matter over we found that if every point was conceded and they had been in a position to bind their principals it would not have the legal effect of an agreement, certainly as to very important matters which the courts have determined. The courts could not determine a paper was a certain thing when the paper itself said it was not.

The great difficulty lies in the fact that we have forty-five States where a certain number of laws have been passed, but only a few have laws on that subject. Those are each of a different character. Outside of eight or ten States there is no legislation on the subject, so that these papers are subject to the operation of common law only, and the common law is interpreted in many ways, so that the holders of these papers have not the faintest idea of what they have. They must be familiar with the laws of the several States, but not with the character of the collateral they have taken.

Bills of lading at present issued, so far as I am informed, are prepared entirely by the carriers. Probably that led up to the bills of lading. I might state what a bill of lading is. Primarily a bill of lading is simply a transportation company's receipt for merchandise to be transported. Up to probably twenty-five years ago we never had any such thing. Rarely was any receipt given but the ordinary

plain receipt of such transportation company which was of no particular value except as evidence against the carrier that the goods had been given to it for transportation. As the country developed it became necessary to use more money to handle the commerce of the country, and the device was adopted of making use of what is known as the order bill of lading, in which the carriers themselves undertake to say that the goods named in this bill of lading will be held and delivered only to the order of the person to whom the papers were drawn, or on his indorsement, exactly as a check or any other evidence of debt. Those papers constitute what are known as the order bill of lading. It is a mere transportation receipt for merchandise which the carrier agrees to retain in his possession until the paper is delivered.

I think probably twenty-five years ago or a little less, most of these papers that found their way into the banks were papers which did not bear the words "not negotiable."

Mr. ADAMSON. What is the difficulty with this last one? Is not that one all right by which they undertake to hold the property subject to order?

Mr. INGLE. Yes; that is what they agree to do. I am now getting a little on legal grounds, but I will state my personal impression. I believe that the railroad has not the faintest idea of stealing the goods and they would probably deliver in nine hundred and ninety-nine cases out of a thousand. That was the moving cause for our effort in asking Congress to enact some law which would make this paper negotiable until canceled. The company as the holder would carry the goods to destination. They might omit to take that paper up at its destination, as they engage to do. Now, the man who owns the paper and who received the goods possibly fails to turn that into the transportation company after he received the goods, but takes it to the bank. The bank sees the contract of the transportation company and the bank handles that paper.

Mr. ADAMSON. The bank can put that man in jail?

Mr. INGLE. Yes; but that does not pay the $100,000 that the bank may have loaned on that paper.

Mr. ADAMSON. You have got to take chances with rascals.

Mr. INGLE. We are perfectly willing to do that, but we submit that the railroads ought not to be permitted to issue papers of that kind unless the paper can do what it says it will do, and that is that they must engage not to deliver the goods without receiving the paper.

Mr. ADAMSON. When they do not do what they promise, can not you recover upon it?

Mr. INGLE. No; they claim that they have delivered the goods named to its destination; that they have fulfilled their part of the contract.

Mr. TOWNSEND. It is violation of the contract?

Mr. INGLE. It is a violation of the contract, if you choose, but the bank taking that paper received it only subject to the equities of the man giving it. If he had received the goods and the contract was not taken up it is of no avail.

Primarily the railroad company permitting that permits a violation of an express contract. I suppose that we have sent thousands of letters around to different parts of the country, and I hope that you gentlemen may have heard from some of them. We have answers which have been received from thousands of them in return.

This business is the business of the country as a whole. It is largely on the cotton crop of the South and the grain and hay of the Middle West, and the flour of Minnesota, and the fruit of California. You will see that we have left out quite a large territory where the use of the bill of lading is not wide.

Mr. GAINES. Would not a great many inconveniences result from requiring goods to be delivered only on presentation of the bill of lading? A great many shippers would not have the bill with them.

Mr. INGLE. If you had a check and came to me and said, "Old fellow, I have a check for $500, but I have left it at home and I wish you would cash this and I will bring in the check;" that would not be good business. This matter is provided for in the carriers' regulations. All of their regulations provide that in case of erasure the notation should mean that it was not negotiable. All we ask is that the carriers shall be obliged to live up to their contract. We think that the railroad when it receives a carload of wheat should engage not to deliver that until this particular paper is surrendered.

Mr. ADAMSON. Is that the agreement in that paper?

Mr. INGLE. It is not only on the back of the paper but is printed separately on the face.

Mr. ADAMSON. You say that the court has held that you can not collect that of the railroad.

Mr. INGLE. Yes; it has been so held.

Mr. MANN. Is it not true that it is like a past-due negotiable paper?

Mr. INGLE. It is subject to the equities.

Mr. ADAMSON. Is it not like a paper which is not due but that may be negotiable, after the manner of a private instrument between parties?

Mr. INGLE. No, sir.

Mr. ADAMSON. Is it not like the case where the party holds a paper not due but is transferable afterwards?

Mr. INGLE. This paper is not like a promissory note.

The CHAIRMAN. The chair would like to suggest that the gentleman be permitted to proceed with his statement. After that inquiries can be made, as it disturbs the arrangements of his remarks and diverts him from the objects to which he wishes to address himself.

Mr. TOWNSEND. They have an attorney who will discuss these legal points.

Mr. INGLE. I am not competent to go into the legal phase of the matter. I have a practical knowledge of the effect. I have stated what an actual bill of lading is. Scattered all over the western country are small grain elevators holding 5,000 bushels and upward. Farmers haul their wheat into these elevators and deliver it for cash. The elevator man has a certain capital. When his elevator is full his capital is exhausted. He has either to get rid of his grain or stop buying from the farmer. He gets cars to come up and he loads the grain into the railroad cars. He gets from the railroad company an order bill of lading. That bill of lading he takes to his local bank and the bank, on the faith of that instrument, cashes the draft. He has then an empty elevator and $5,000 with which to buy more grain. The draft is in possession of the bank and that bank sends that bill of lading with the draft attached for the value of the wheat or the corn to its destination in Chicago or New York. The consignee pays that draft to the bank.

Many of these people who buy grain have only a small capital on which to conduct their business. They send away perhaps 20,000 bushels of wheat with the draft attached. It may be that such a man has no more than $10,000 in his business. He will take that order bill of lading and borrow money on it to do more business, so that at every step of this proceeding those papers represent value. These papers are all held by the bank until the exporter is ready to send his grain across the water or has sent it across. He then comes, perhaps overnight, turns that in and gets money in the shape of a foreign bill of exchange. He does that the next day or at once. That is the function of a bill of lading.

If you do anything to restrict the usefulness of that instrument you gentlemen can readily see that it would be a serious hardship placed on the commerce of the country. While this matter is being discussed, although we know perfectly well the character of these papers, yet we know that the papers are not what they say they are. As bankers we have determined that we will help this matter to be worked out. The bankers of the country annually advance on securities supposed to be good the sum of $2,500,000,000. We lend per annum this amount on these papers. If you do anything to disturb that you can see what happens. You have here specimens of blanks. You are possibly familiar with the ordinary bill of lading.

Mr. ADAMSON. What is the difference between a straight bill of lading and an order bill of lading?

Mr. INGLE. The straight bill of lading is principally a plain carrier's receipt, such as was originally made use of back before we had an order bill of lading, just such a receipt as you give when you take a package to the express office. You do not get a demand to surrender that receipt.

Some two or three State legislatures have endeavored to make these papers mean what they say they mean, and have passed statutes which recite that any receipt given by any carrier for merchandise to be delivered shall be a negotiable paper unless it be stated specially that it is nonnegotiable and be so stamped. As a result of that they have gotten over that difficulty by stamping them all nonnegotiable. That nullifies the law. It was the purpose of the statute to make the paper good, whereas now it is not good when it is stamped nonnegotiable.

That is one suggestion. Further than that, up until eighteen months ago, we rarely saw a bill of lading. It was not signed by anybody except the agent of the carrier or some one representing him. Then this uniform bill of lading was provided. It is nominally held in abeyance. These regulations are prohibitive, and I think are arranged for two sets of rates. The shipper will sign a certain contract, and on the bottom of that paper the bill of lading makes that paper a contract enforcible only according to what is in it.

Mr. BARTLETT. That is due to the fact that the shipper gets a reduced rate for doing that.

Mr. INGLE. No, sir; he gets the same rate as he always paid. If he wants to get the paper free from that contract he is fined 20 per cent of the rates he has always paid—not 1 per cent, which would cover the risk, but 20 per cent, which is prohibitive. Those are the regulations. The shipper who waives his common law right pays a fine of 20 per cent for getting the paper subject to common-law interpretation.

Mr. BARTLETT. The ordinary common-law statute, in a number of States—notably my own State of Georgia—provides a waiver, and that waiver is vital to the railroad interests because it is against public policy. Unless in pursuance of that waiver the shipper gets some benefit he would not otherwise be benefited by the waiver.

Mr. INGLE. Technically he would not get the benefit of this 20 per cent. Only 12 States in the Union have laws on the subject. I have referred to the nonnegotiable feature and the contract feature. Those are vital and objectionable to the holder. We have no selfish purpose. Every holder of these papers is in exactly the same position. Furthermore, many of these papers are altered in material particulars, especially as to dates. Many of them are prepared by the shippers themselves and taken to the carrier. He may begin sending off a shipment one day and does not get it down until the next day. He takes the old bill, and the carrier makes an "8" out of a "7," and that will go. But he will keep on making it 1805 without altering the year of those other altered bills. Every such alteration of these bills voids that instrument. We can not go into court with it. The clause on the back is supposed to cover that. It says that any alteration or erasure that shall be made shall be void. The railroad company tells us in a pleasant way that it means exactly what it says, but any alteration of that paper affects that and throws it back and makes it enforcible only in such terms. We can not go into court with it because the railroad attorney is there, and he will say that this is an altered bill and that we have no standing in court.

That is the trouble. Certainly we think that 20 per cent of these papers we receive are altered bills. There is another difficulty in the way.

I have referred to the straight consignment of bills or shippers' receipts.

These papers are carelessly drawn—drawn by everybody, and those are known as straight bills. The railroad has no responsibility whatever. This man takes this straight consignment bill, and all that is necessary to do is to take a pen and write "order of" before the name of the consignee, and to all intents and purposes, in the hands of a third party, that is a bona fide order bill of lading. So that we think if the railroad company be permitted to issue these papers to be negotiable at all, that they should be so beyond doubt as far as possible. We think that the words "order of" should be printed in. I think that is a reasonable suggestion, and I do not think that they have any serious objection to doing that. That is the thing that forces itself to the front when we begin discussing this subject. I have here bills which have been altered in both particulars. It is one of the difficulties to be overcome. They are alterations, erasures, and changes from the straight shipments to order shipments. I have at present three bills. We do not question them. They may be paid, and they may not be. Maybe the fellow has gone wrong and the only satisfaction that we will get will be in sending him to jail. I have seen thousands of altered bills, but I do not believe that I have ever seen an alteration that has been noted. We have two bills. They are not negotiable. That is done by scratching out the word "not," which makes them all right. I do not know who scratched out that word, but I have no doubt that it was done before issuance.

Mr. ADAMSON. Do you not get that man's oath?

Mr. INGLE. An oath does not make it any better when a man wants to rob you.

Mr. RICHARDSON. You stated in nine hundred and ninety-nine cases out of a thousand the railroad delivers the property.

MR. INGLE. Yes; it delivers the property, but in the one-thousandth case we lose the money.

Mr. BARTLETT. The purpose of this bill is to make these negotiable. Suppose somebody brought you a promissory note with some sort of a disfiguration on its face. Would you take it?

Mr. INGLE. Not unless I knew the maker and could enforce it against the maker. The instrument is against the maker.

Mr. BARTLETT. Do you believe that you would take more chances than on a promissory note?

Mr. INGLE. If the banks of the United States as a whole were to decline to accept these papers, this business would have to take care of itself.

Mr. ADAMSON. Can you tell whether this was made by the agent or whether by the other fellow?

Mr. INGLE. We have no objection to taking the ordinary business chances.

Mr. TOWNSEND. Does the agent make a notation where he makes a change?

Mr. INGLE. If he is an agent, he makes a notation, but if that paper is accepted and the notation is not made, we are the victims. What I would submit is this: That when these corporations issue papers of that sort they should be in such form that they would be negotiable.

Mr. TOWNSEND. Alterations should be signed?

Mr. INGLE. Yes, sir.

Mr. RICHARDSON. Has your bank ever suffered in any way?

Mr. INGLE. Yes, sir; to the extent of $84,000.

Mr. ADAMSON. Suppose the railroad has delivered the goods?

Mr. INGLE. That gives rise to all these figures of a differing character. Each transaction has its own particular weakness—some as to alterations and some——

Mr. ADAMSON. And do you say that the reason you lost in these cases was that the bills were assigned to you after the goods had been delivered?

Mr. INGLE. Yes, sir; and the bills not having been taken up as they should have been. Every bank relies upon that absolute promise.

Mr. ADAMSON. Has your association or committee considered the subject as to whether or not you should force any American citizen or any parties in the United States to make contracts against their will?

Mr. INGLE. I should think you have police duty, gentlemen, in the United States, and if a person enters into any contract which they will not live up to you have a right to punish them.

Mr. SHERMAN. Would it not meet the case better for the banking association to prepare the public, notifying the public that they would not accept papers drawn except in a certain way?

Mr. INGLE. But what would be the effect of that, of our shutting down on this thing? You must not think that we are entirely selfish in this matter.

Mr. SHERMAN. You are not asking Congress to compel the making of any kind of a contract, but merely to compel them to live up to the contracts that they make?

Mr. INGLE. Yes, sir; to live up to the contracts that they make.

Mr. ADAMSON. I have asked these questions on this bill that we are talking about, which is right here [indicating H. R. 15846].

Mr. SHERMAN. You want them to live up to their contracts that they do make?

Mr. INGLE. That is right, and because we do not want them to take advantage of the fact that under this law they would be able to evade all these liabilities.

Mr. RICHARDSON. How do you explain the fact that he is not liable in these matters? If a man violates a contract, he is responsible in an ordinary suit in all the affairs of life.

Mr. INGLE. But the difficulty is that in this case you think that you have a contract and——

Mr. RICHARDSON. You must look out for yourself as everybody else. Everyone else has to look out for himself in these matters.

Mr. INGLE. We are not selfish in this matter at all. It is very easy for the banks to decline to accept these papers. If the banks should refuse to accept these things as collateral, they could have no difficulty with them.

Mr. ADAMSON. It seems to me that you should be required to look out and see that you do not take these things if they are bad. Generations and nations have lived according to that rule since the beginning of time.

Mr. INGLE. I beg your pardon.

Mr. ADAMSON. I say that a man taking any paper should look out and know what he is getting.

Mr. BARTLETT. You say that your bank lost $84,000 by reason of a transaction of this sort. How recently had those bills of lading been issued in that case when you loaned the money?

Mr. INGLE. I think they were raised; the dates were modernized from six months to a year. I do not think any of the bills were more than a year old.

Mr. BARTLETT. The bills of lading were a year old when you loaned the money on them?

Mr. INGLE. Yes, sir; but how did we know it?

Mr. TOWNSEND. You had no means of telling?

Mr. INGLE. Absolutely none. If you do not think that the people that you are dealing with are pretty good people anyhow, you might perhaps get the idea of inquiring and examining minutely, but as a matter of fact everybody takes these things.

Mr. BARTLETT. Is not this a fact—I know it is so in the part of the country that I live in. Take a commission merchant in my town; a commission broker ships a carload of corn or meat in Chicago. All those things are all cash, generally. He directs the merchant in Chicago to ship a carload of meat or corn, or whatever he orders, to A B, and to attach a draft to the bill of lading and notify the purchaser—the consignee. That matter, that bill of lading with the draft attached, comes faster than the carload of merchandise, or whatever it is. It gets to the bank, and the man who orders it pays the draft and gets the bill of lading, and the railroad delivers it to the consignee upon the presentation of the bill of lading. I know that is the uniform practice in my part of the country.

Mr. INGLE. That is right. But suppose for any reason the goods are delivered without the surrender of the bill of lading. Suppose that the agent of the railroad is a pretty good fellow, and the consignee

is a good fellow, and they know each other pretty well, and the man that is getting the consignment comes in and he says: "John, look here, I have got this bill of lading, but I declare I forgot to put it in my pocket when I came over here. I wish you would let me have this carload of goods, and I will send you the bill of lading." That happens thousands and thousands of times.

Mr. BARTLETT. It happened in my town, and the freight agent who delivered the freight without the bill of lading, his securities had to pay for the loss, and they did it. I know the man, as clever a man as I ever saw, was caught in that way, and he not only paid the loss of his bondsmen, but he lost his job.

Mr. MANN. How long do you think an outstanding bill of lading ought to be negotiable after the goods are delivered, one year or ten years?

Mr. INGLE. That is a question that is moot just at the moment. I think, theoretically, there ought never to be anything like a spent bill of lading any more than there ought to be a spent certificate of deposit. If you come into my bank and get a certificate of deposit for a thousand dollars, that should be good until it is canceled, if it is fifty years. That is the way that our bank does——

Mr. MANN. You do not think that those cases are analogous, that of a bank that puts the money in a vault and lends it out——

Mr. INGLE. I said that the question is to-day moot. If the goods come it may be necessary in the case of a loss of the mail, or if for any reason the bill of lading is lost, to deliver without the bill. Mind you, that is the odd case that happens; that is only the odd case. These bills come in in a very nice, comfortable way as a rule. But if a man is not able to present his bill of lading, then the carrier will take a bond of indemnity just as any one else does to protect themselves against the operation of any law which they are technically breaking. I think, in view of the fact that these gentlemen are not operating within four walls and have not direct control all the time of all of this property, that it is altogether fair that there should be some limitations of the operation of this law for the particular reason that they get their bondsmen to give the bonds of indemnity, and you can never tell when their sureties may die or anything might happen touching their security, so that we think that the term during which those bills should be alive ought to be as long as possible.

Mr. MANN. How long?

Mr. INGLE. I think three years at least, to cover the ordinary statute limitations in most of the States.

Mr. ADAMSON. Ought it to be any longer than you could reasonably require the railroad to hold and store the goods?

Mr. INGLE. We have bills of lading at this moment two or three years old, shipments from around the Mississippi Valley. We know that if that man will put his goods on a car it will take four or five or six days in the ordinary course of traffic to bring those goods from Omaha to New York. We do not care how long it is, so long as we have an inviolable contract of a railroad. There are two or three months in the winter time when the lakes are frozen, and we have had those bills four or five months old, and as good as they were the day they were written; so that you can not determine the life of a bill from its date, particularly when the date is altered.

Mr. ADAMSON. Do not the railroads stipulate how long they shal hold those goods?

Mr. INGLE. Yes, sir; but those railroads, if they are dealing with a pretty good customer, are not particular about enforcing that. If they are dealing with a pretty good customer, those cars go to their destination, and they do not press that customer to take off his goods within a day or a week or a month. They are willing to let him have free storage.

Mr. ADAMSON. Of course some things are less perishable than others, and they have their demurrage charge which they will enforce in certain instances.

Mr. INGLE. Yes; but in a broad way they are not compelled to enforce that. We have nothing to do with the police regulations. We ask that these papers be made negotiable, as they tell us they intend. We ask that we be given the papers on a form on which the words "order of" shall be printed, so as to lessen the opportunities for their misuse. We ask that any alteration of these bills be ineffective as against their operation in accordance with their original terms. That is exactly what they tell us this clause of their own means. They are perfectly willing that that be enforceable according to its original tenor.

The only other thing that I have not touched upon, one very important point, is this: Under the interpretation of some of the courts, and indeed under the laws of some of the States, any holder subsequent to the party to whom the bill is issued becomes a warrantor for the quantity and quality of the goods in that bill of lading. I can understand how originally that is so, but, as a matter of fact, in practice, it was an entirely new situation. It was apparently never thought of when the Harter Act was enacted. But, as a matter of fact, now any subsequent holder of that paper becomes a guarantor and warrantor of the character and quality of the goods mentioned in that bill of lading; so that if a man down in Alabama ships a hundred bales of cotton to a man in Boston, and attaches that to a draft, the bank down there does not bother upon those things. It is a bill of lading for a hundred bales of cotton. Suppose it turns out when that cotton gets to Boston that it is cotton waste. Now the Boston man has not recourse against the man he is dealing with. The only purpose in attaching that bill is to carry the title in the goods. The man has paid for it, but after it is opened it is found to be cotton waste instead of cotton. What happens? The fellow in Boston comes back, and the bank has to pay, unless we have to take the trouble of opening all those papers and distinctly waiving all that responsibility.

Mr. ADAMSON. You say the first bank in Alabama did not bother to examine that cotton?

Mr. INGLE. They did not go down and specifically examine it. They had a bill of lading for 100 bales of cotton. They are relying on that. Everybody is straight until they run off the track at one time. They deal with this man for months and years, and all of a sudden he thinks, "They are pretty well acquainted with me and they think pretty well of me, and it is time to make a ten-strike, boys."

Mr. ADAMSON. That could not possibly happen in Alabama.

Mr. INGLE. Of course I know that it could not. I selected Alabama for that reason, because it could not possibly happen there.

Mr. ADAMSON. It is known throughout the world that it never did.

Mr. INGLE. The only thing in this bill that we ask for, and which we are not told that the railroad people intend to give us by their

present papers—the only single thing we ask for which they tell us they do not intend to furnish now—is the making of the carriers responsible for the acts of their agents. You understand.

A railroad agent out West, or anywhere in the world, let us suppose, is in collusion with any third party. Or it may be without collusion, if you choose. That man on his own responsibility simply issues an order bill of lading, the goods not having been delivered—there never having been any such goods. That bill is hypothecated with the bank. The courts in some States have held that this agent exceeded his authority. Other States have had to cover it by a law. All the laws are different, you understand. Of course the agent did exceed his authority, but how is the holder of any of these papers to judge? These papers are issued by the thousand.

If I may revert to my original comparison, if you come in and ask me for a certificate of deposit for $500, and I choose to give you that certificate of deposit, you can keep that certificate. My bank is obliged to pay that certificate of deposit when it comes in, in anybody's hands but yours. We have that responsibility for it. But the carriers say they will not have that. How is any one in the world to know that any single one of those papers is issued by authority.

Mr. RUSSELL. Suppose some particular consignor takes goods of great value to a carrier, we will say silk, and represents it to be silk, and it is boxed up and delivered to the carrier, and the carrier issues a bill of lading; then it turns out that it is not silk, but goods of a very inferior quality. Is the purpose of this bill to make the carrier responsible in that case?

Mr. INGLE. No, sir; we have made an amendment to it which will come out in regular order covering that situation.

Mr. MANN. You gave an instance a while ago of cotton coming from Birmingham to Boston, where it might be discovered to be cotton waste. Do you propose, if that untrue bill of lading is issued for that at Birmingham as cotton, that it is the duty of the railroad to open all that cotton and see whether it is cotton or cotton waste?

Mr. INGLE. No, sir; all we want to do in making this waiver is that in view of any misrepresentation of any shipment from Birmingham to Boston, that it is primarily and ultimately a matter entirely between the shipper and the consignee. You see what I mean.

Mr. MANN. No, sir; I do not see what you mean.

Mr. INGLE. If this shipment of cotton turns out to be cotton waste, it is not a matter in which the railroad or the banks have any interest at all. It is a matter which must be determined between the man in Boston and the man in Birmingham without bringing the banks in at all.

Mr. MANN. How can it be? The banks are in.

Mr. INGLE. No, sir; not at all.

Mr. MANN. The banks are out the money; that brings them in.

Mr. INGLE. No, sir; we have collected our money for it. The Boston man has paid for that thing on the theory that it is cotton. He is in the hands of his own customer down in Birmingham.

Mr. MANN. Yes; but in order to get the money he has borrowed money in a Boston bank on that bill of lading.

Mr. INGLE. But he may have responsibility; he may be responsible outside of his own cotton.

Mr. MANN. He may or may not have.

Mr. INGLE. If he does not have, that is a business risk that we take. But we do not want to warrant the quantity and quality of these goods. The effect is to relieve us of the annoyance and trouble of having to open these papers and go through with a stamp and carefully and particularly waive responsibility.

Mr. MANN. You want a provision that the man who negotiates a bill of lading shall not warrant the quantity and the quality of the goods?

Mr. INGLE. No, sir.

Mr. MANN. That no intermediary shall?

Mr. INGLE. That no intermediary shall. No intermediary is supposed to know anything about the quantity or quality of the goods. If they can not collect their money out of the customer, that is a business risk.

Mr. MANN. What you want is a provision exempting you from the present liability which the law lays on you.

Mr. INGLE. As warrantor.

Mr. RICHARDSON. Do you not know that in the case of bales of cotton we have that cotton in bonded warehouses, and those bonded warehousemen certify to all that?

Mr. INGLE. No, sir.

Mr. RICHARDSON. There is such an officer, and he has a bonded warehouse, and he gives the certificate of what the cotton weighed.

Mr. INGLE. But those do not accompany the bill of lading.

Mr. RICHARDSON. But it is a statement to the banker.

Mr. INGLE. No, sir; we have never seen such a thing, except incidentally.

Mr. RICHARDSON. It is a common thing, and the banker then has the bill of lading which goes on to Boston.

Mr. INGLE. The way I understand it is handled is this: A man in some place down in North Carolina will make a shipment of cotton. He will ship that cotton to Boston via a compress at Atlanta, or Charlotte, if you choose. Now, here is the original Southern Railway bill of lading for a hundred bales of cotton. It goes along and gets in this compress. The original bill of lading is the only evidence of that property outstanding. That cotton is compressed and again goes forward—not the identical cotton, but cotton of the same grade goes forward—and is delivered in fulfillment of that original bill of lading.

I did not mean to monopolize all this time. I hope that I have not wearied you gentlemen.

Mr. RICHARDSON. Do you not think a banker should have some responsibility; that when he goes to attach a bill of lading, or draft to it, that he would find some way of finding from the cotton warehouse how many bales are there and how much they weigh?

Mr. INGLE. You know, as a matter of fact, as to cotton the marketable bale is 500 pounds of cotton. The grades of that cotton are matters fairly well understood at the starting place, at least. I only referred to cotton because it was a staple.

Mr. RICHARDSON. And a very important one.

Mr. INGLE. And a very important one.

Mr. BURKE. Do you think it is a fair comparison to compare a bill of lading which may be issued by the agent of a railroad company at any station with a certificate of deposit issued by a bank?

Mr. STEVENS. In other words, do you allow any bookkeeper to issue certificates of deposit?

Mr. INGLE. Not to sign them.

Mr. STEVENS. It must be an executive officer?

Mr. INGLE. Yes, sir; and the agent is under their provisions an authorized officer to issue bills of lading. If we take any bills of lading which are not signed by the authorized agent to issue such bills, it is our loss; but if we take a bill of lading issued by an officer authorized to issue them, and who does issue them day after day, and who does issue a fraudulent one, we say that that carrier should be responsible for it.

Mr. BURKE. I think that you stated that the banks of the country handled about two and a half billions of paper of this kind last year?

Mr. INGLE. Yes, sir.

Mr. BURKE. What loss, if you know, if any, did the banks incur from these causes which you have been describing?

Mr. INGLE. I can not answer you that question in dollars.

Mr. BARTLETT. What per cent; can you answer that?

Mr. INGLE. No, sir; but it is hundreds of thousands of dollars.

Mr. BURKE. How much?

Mr. INGLE. I will state a case. I think this case out in St. Joseph was made largely possible by reason of the fact that the word "order" was not printed in this bill. There is a case in which $400,000 was lost, only a few months ago.

Mr. BURKE. How do you think these losses would compare with those losses of the banks in other classes of business?

Mr. INGLE. Many banks do not handle these bills at all. Some of them do not handle them for the reason that their environment does not call upon them to handle them, and others for the deliberate reason that they will not; they are afraid of them.

Mr. TOWNSEND. Do banks take pleasure in publishing their losses?

Mr. INGLE. No, sir; they do not like to do it. They will not do it. Some of them are kind enough to tell us about their losses, but some of them that we know have suffered such losses gave us everything in the house except the fact that they had lost $10,000, $20,000, or $30,000.

Mr. BURKE. It is impossible for a bank to do any business of any kind or description without there being some chance of loss?

Mr. INGLE. Exactly so.

Mr. BURKE. What I was getting at was whether the percentage of loss in this business was greater than the percentage of loss in the general loaning of money.

Mr. INGLE. The loaning of money on bills of lading is a matter of sufferance, and the risk is greater all the time; and if we were dealing with anybody but responsible railroad people, we would not touch them for a minute, because we know that no railroad undertakes to deliberately wrong anybody in the issuance of papers of that kind; but we know the minute that we get a stale paper it is not worth the paper it is written upon.

Mr. MANN. Do you loan money on these bills of lading to people, as a common thing, whom you know nothing about?

Mr. INGLE. No, sir; we loan to people who are our customers, and as I say, everybody is innocent until they are proven guilty.

Mr. MANN. Do you think if a man produces a bill of lading that is three years old——

Mr. INGLE. He never produces one that is apparently three years old.

Mr. MANN. You say that he produces one on which the date has been changed by himself. Clearly the railroad would not be responsible for that. Your proposition is that the bills indefinitely now are good for three years. Do you think if a man produced a bill of lading to you that showed on its face it was three years old, it would be your duty to ascertain whether those goods had been delivered before you loaned money on that bill?

Mr. INGLE. Unquestionably it would.

Mr. MANN. It would not if we put into the law the provision that it should be delivered within a year.

Mr. INGLE. No bank would do anything silly.

Mr. MANN. It would not be silly if the bill was perfectly good.

Mr. INGLE. I beg pardon. I did not mean to use that word "silly."

Mr. MANN. You want to make the railroad responsible for it.

Mr. INGLE (continuing). I am confident that the business of the country is not conducted that way.

Mr. MANN. I am confident that it is not conducted that way; but what you wish to do is to have it so that it shall be conducted that way.

Mr. INGLE. Here is a paper. It is a mere question of a paper that they promise to take up. You should never see one of these papers under any conditions.

Mr. MANN. Assume that an agent is negligent and does not take it up, as I presume often happens.

Mr. INGLE. Yes, sir.

Mr. MANN. Now, if that is presented to you long after the time when it ordinarily would be taken up, is it not your duty to make an investigation?

Mr. INGLE. Unquestionably; and I think any bank in the country would do so.

Mr. MANN. Do you want us to pass a law providing that it is not your duty to do it?

Mr. INGLE. No, sir. Well, if you choose to put it that way, we do. We think that paper should be given for a generous length of time.

Mr. ADAMSON. Do you think that the number of rascals would be reduced or the opportunities for fraud would be diminished by enacting this bill?

Mr. INGLE. Unquestionably. Gentlemen, it is such a simple thing. We only ask to make really effective what these people give. What possible objection could there be to it?

Mr. RUSSELL. I notice you say in section 3 of this bill:

That every negotiable bill of lading issued by a carrier or by the agent of a carrier authorized to issue bills of lading in the hands of a bona fide holder for value shall be conclusive evidence as against the issuing carrier that the goods therein described have been received, notwithstanding there has been no delivery, or only a partial delivery, to such carrier of such goods.

Mr. INGLE. Had I not better ask Mr. Peyton to talk to you on that?

Mr. STEVENS. You stated that quite a portion of the bills you received were made out by the shipper in his own handwriting, and changes would probably be in his own handwriting. Have you any

notion, from your experience, what proportion is made out by the shipper himself?

Mr. INGLE. I imagine that 90 per cent of the ordinary order bills current to-day are prepared in the office of the shipper.

Mr. STEVENS. They are men with some business experience and accustomed to dealing with banks?

Mr. INGLE. Yes, sir; and they know that in practice an alteration will not have any effect so far as getting their goods shipped by the carrier is concerned.

Mr. STEVENS. But it might make a difference if their bank refused them credit when the bill came up.

Mr. INGLE. And, on the other hand, there is the compact organization of the railroads, who have their own committees, composed of a few gentlemen whose words can effect a complete change all over the country. On the other hand, we are dealing with 20,000 banks in the country, and it is not to be supposed that the cashier of a little bank out in a small community out in the Territories would have any particular technical knowledge of all these conditions and papers. He has probably never read the negotiable-instrument law. Ninety-nine per cent of his business is done on faith in his particular man. They come up to us, bushels of all kinds of papers, liens on crops, and all that kind of thing, which, outside of the faith we have in the bank's indorsement, would not be enforceable in our hands. I do not suppose 20 per cent of them would be collectible.

Mr. BARTLETT. I want to ask this with reference to the amount of losses occasioned to the banks, which Mr. Burke asked you with reference to. Do you think it would amount to as much as 1½ or 1 per cent?

Mr. INGLE. Dear me, no, sir; 1 per cent on two and a half billion dollars; never; dear me, no, sir. We do not lose one-half of 1 per cent.

The CHAIRMAN. If you have finished I would like to ask you a question or two. As a practical man, what effect would the enactment of this bill into law have upon the railway rates throughout the country?

Mr. INGLE. I do not see that it has the slightest connection with that subject at all.

The CHAIRMAN. Would it increase the expenditures or the liabilities of railway companies?

Mr. INGLE. It would not increase the liabilities of railway companies one iota beyond their professed liability. You understand what I mean, sir.

The CHAIRMAN. Would it increase their liabilities as a matter of fact?

Mr. INGLE. As a matter of fact it would increase their liabilities, because they would have to assume the responsibilities which they undertake, and which they evade the minute they are confronted with a spent paper.

The CHAIRMAN. What would you say the amount of that increased liability would be?

Mr. INGLE. Let us say, in a general way, between $100,000 and $200,000 a year in the aggregate.

The CHAIRMAN. In the whole business of the United States?

Mr. INGLE. In the whole business of the United States.

The CHAIRMAN. What would be the effect of this legislation upon

requiring them to employ a different class, and a higher priced and more responsible class, of agents throughout the entire region?

Mr. INGLE. That, of course, is another subject. All of their agents now are gentlemen having a multiplicity of duties. The smaller the town the more the responsibility that is placed upon one man. That man has charge of the ticket office. I guarantee that that man makes a proper return for all of his tickets or they get the reason why. That man is the Adams Express messenger and the telegraph operator and 40 other things. Now, these ordinary papers are not the usual papers used in a small town. He would probably be called upon to issue, during nine months of the year, none at all. During the grain-moving period he would have to issue perhaps one or two a day. That is an inappreciable amount of work, and no additional labor, the minute they issue their forms. There would be no added expense.

The CHAIRMAN. You think they would be just as safe in putting their power to create obligations for them into the hands of these insignificant agents as they are now; there would be no more liability?

Mr. INGLE. I can not conceive that there would be. Of course, you must remember that it is a very rare thing now for such fraud to be committed. Indeed, now he has in the first place to get some one with him to connive.

The CHAIRMAN. Under this law it would put the power in the hands of every agent they have to bind them in this way, as in the case illustrated by Mr. Russell, of receipting for silks where there was an inferior article shipped——

Mr. INGLE. We have provided for this, Mr. Chairman.

The CHAIRMAN (continuing). Or giving the bill of lading where no property at all was received. You would put that power into the hands of every one of the railway agents in all the little stations throughout this country.

Mr. INGLE. The various States, one after the other, are enacting just such laws.

The CHAIRMAN. I am asking your opinion whether or not that would increase the freight rates throughout the country.

Mr. INGLE. I beg your pardon, sir. I really think that in comparison with the entire volume of business the percentage would be such an insignificant figure that it would not be appreciable. I think, in other words, that if the worst should come to the worst, and there should be an increase of the freight rates of the country of 1 per cent, the railroads would soon accumulate such an enormous fund to cover their liabilities of every kind and description that they could pay an extra dividend out of the proceeds of that fund, outside of their outlay for that contingency.

Mr. BARTLETT. I wanted to ask this gentleman another question. Has he said anything about, or thought anything about, what the effect of the passage of this act would be upon the rights of the shipper or vender to stop in transitu goods that had been shipped when he afterwards ascertained that the man who sold them had become insolvent between the time of the shipment and the time of the arrival of the goods at their destination?

Mr. INGLE. Under the order bill that man would——

Mr. BARTLETT. I am not speaking of the order bill.

Mr. INGLE. If that draft has not been paid, and that man discovers that he is dealing with a fraud, on the other hand there is no reason

why he should not order back through his bank any paper with that draft attached.

Mr. BARTLETT. But the bank transferred it to you, and your transferring it to somebody else in New York carries with it the bill of lading.

Mr. INGLE. Of course it does, but the man that starts that bill can telegraph to us, "Do not deliver those goods, but return the draft," and then we telegraph to New York to return that draft upon presentation, and he can stop that at any step of its progress, short of actual delivery.

Mr. BARTLETT. And short of the presentation of the bill of lading?

Mr. INGLE. Yes, sir.

Mr. GAINES. Section 8 provides that the railroad must issue a bill of lading upon request.

Mr. INGLE. That is to provide for this——

Mr. GAINES. Section 5 then says that where the party to whom a negotiable bill of lading has been issued has——

Mr. INGLE. We have withdrawn section 5 entirely.

Mr. BARTLETT. And section 3 also?

Mr. INGLE. No, sir; section 3 is vital.

Mr. BARTLETT. I should think it was, according to your ideas.

(At 12 o'clock m. the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee reassembled in pursuance to recess, Hon. William P. Hepburn in the chair.

The CHAIRMAN. The committee will be in order.

Mr. TOWNSEND. Mr. Paton, will you take the floor? Please tell us your name and business.

STATEMENT OF MR. THOMAS B. PATON, ATTORNEY AT LAW, NEW YORK CITY, N. Y., COUNSEL TO COMMITTEE ON BILLS OF LADING, AMERICAN BANKERS' ASSOCIATION.

Mr. PATON. My name is Thomas B. Paton, of the New York bar, representing the bankers' committee on bills of lading.

Mr. Chairman and members of the committee, I was going to remark that judging from the gatling-gun volley of questions addressed to the speaker this morning I was reminded of the story of the notice posted in a western dance hall: "Please do not shoot the piano player—he is doing the best he can." So I suppose you will remember that.

I am here, by request, to explain the provisions of the bill (H. R. 15846) relating to bills of lading issued by carriers for the interstate transportation of property, etc., which is before this committee; and leading up to that, showing or attempting to show, if possible, the necessity why Congress should enact such a bill or a bill containing the points attempted to be covered by this bill, I desire to submit a very few preliminary remarks. I will not take over three or four minutes.

To begin with simplicity, so to speak, before we go on with complexity, in the year 1904, $20,000,000,000 of the raw and manufactured products of this country were produced, the great proportion of which being intrusted to common carriers and crossing State lines. In

the delivery of these goods to the carrier, of course, it is not possible for the shipper himself or his agent to go with these goods from the point of shipment to the point of destination. The shipper must get some written evidence of the fact of shipment, so that the bill of lading has developed as a necessity, a necessary essential to such shipments.

The shipper takes a bill of lading, which is a receipt for the goods and a contract to deliver them at the destination. Originally at common law there was no third party connected with this bill of lading. There was no obligation to take up this bill of lading at its destination. It was simply a receipt or memorandum. It was what is known as a straight consignment, a bill issued to John Smith, of San Francisco, consigned to Peter Jones at New York. If that was the condition at the present day, there would be no such question before you as this; but it has so developed that the shippers of this vast amount of goods can not do it on their own capital. They can not do it on straight consignments. They have got to borrow money and use the capital of others with which to conduct this business.

That is a conceded fact. Now, in borrowing money they have to have security; they have to give security. No bank can lend money without security. Therefore from that situation has developed the idea which is expressed in the existing bill of lading—that a bill shall stand for the goods. It shall be good for the goods. It shall be taken up on delivery of the goods. It shall represent the title and carry the title to the goods.

I would like to read that clause in the existing bill of lading, because that is the clause which purports to give the holder the security, the right to the goods. [Reads:]

If the word "order" is written hereon, immediately before or after the name of the party to whose order the property is consigned, without any condition or limitation other than the name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly indorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading.

In other words, in the case of a straight consignment, a consignment which names the consignee, they do not have to take up the bill; but where the word "order" is written on the bill, then they agree to take it up, so that the bill can represent the property, can be good for the goods; and where it is loaned on, the banker can hold it to secure the loan, as he holds the goods and can look to the railroad to deliver those goods to him.

That is the theory, but how does it work out in practice? Is this a security? It is not at present, and there have been numerous losses to bankers, and they are increasing every year. There are some weak points in this security, and those weak points we are endeavoring to cover in this bill.

Now, to simply enumerate those weak points, in the first place they agree to take the bill up or deliver the goods.

Mr. ESCH. There is a little confusion as to the word "bill." Do you mean the pending measure or the sample bill of lading?

Mr. PATON. Hereafter I will speak of the act in referring to this proposed legislation, and of the bill of lading in referring to this sample bill of lading. The first weak point in which this is not a security is this: Here is an "order" bill of lading, under which the carrier

contracts to require the surrender before the taking up of the property. Generally it is done; sometimes it is not done. Take those cases where it is not done. Suppose the holder of this bill who has received his goods proves dishonest. He goes to a bank and pledges it. The bank, seeing that it is an "order" bill of lading, good for the goods, good against the railroads presumably—because it would not be outstanding if the goods were delivered— loans money on it, but when it presents the bill of lading to the carrier and calls for those goods, the bank finds that the goods have been delivered. The bank then goes to court. Your contract is that you would take up or require the surrender of this bill upon the delivery of the goods. The court says:

> True; the carrier broke the contract, but when it delivered the goods to the lawful owner under this contract the functions of the bill of lading ceased. It discharged the bill. The bill no longer has any validity. It was a spent bill. It was no good. Thereafter the negotiation of this spent, invalid, worthless bill was a fraud, and you can not recover from the railroads, because they have delivered the property to the rightful owner.'

It is the same theory of law exactly as the payment of a negotiable instrument at maturity. That has been so held. That is one weak point.

Now, a second weak point is this: Bills which are not intended for negotiation——

Mr. STEVENS. Will you please inform us what courts have held that?

Mr. PATON. The New York court of appeals.

Mr. STEVENS. Have you the decision at hand?

Mr. PATON. I have somewhere. I can cite it later.

Mr. STEVENS. Please produce it to us at your convenience.

Mr. PATON. Yes, sir. The second weak point is this: A straight bill, a bill not intended for negotiation, is issued. It is mailed to the consignee named in the bill. The words "order of" are not on the bill. The contract as it exists does not require the taking up of this bill. The carrier does not take up the bill. After receiving the goods, the holder, who has received them, proves dishonest. He simply writes in the words "order of" and negotiates it to a bank. That has been done time and again. He fraudulently changes that to an "order" bill of lading. It is a fraud, but this present form of bill of lading permits that.

That is the second weak point. Now, a third weak point is this: These bills are often written on barrels and made out in lead pencil, carelessly drawn, and made susceptible to all kinds of alteration. The rule of law is that a material alteration voids an instrument. In the case of this bank in Baltimore, referred to this morning, they had some thirty-odd bills of lading, "order" bills of lading, which the railroad did not require the surrender of when they delivered the goods. The owner of this bill, the holder of this bill, after he has received the goods, gets in a tight hole, and he takes and changes the date three or four months ahead to make it appear fresh, as representing goods in transit, and he puts it in bank, in the bank he was dealing with for years, and $84,000 was the amount of loss in that transaction.

The case went up to the court of appeals of Maryland, and the court of appeals of Maryland held that the bill was altered in a material

respect. The alteration of the bill voided it completely. That was the ruling. That was the loss there.

Then another cause of loss is the fraudulent issue of spurious bills by a freight agent. An agent authorized to issue bills of lading conspires with some shipper, and no goods have been received, but he issues the bill and the supposed shipper negotiates it, and it represents nothing.

Now, I understand the Federal courts and the courts of a number of the States hold that that unauthorized fraudulent forgery of the freight agent is the act of the agent only and does not bind the carrier. On the other hand, the New York court of appeals has held that it is an act within the scope of his authority and does bind the carrier. On that point we have covered it in the act, and I admit there is a debatable question whether the carrier should be covered or not.

It is in these matters that this bill of lading is insecure. It is in those matters, and they may seem simple, but they are not. They are serious. There are men in this room to-day, presidents of banks, who, unless there is some better security afforded, will feel unsafe in further loaning money on such security. They will feel that it is not their duty to lend money; that they can not, in justice to their stockholders, continue loaning money on something that has no security at all in its present shape.

But the loaning of money on such security is necessary. It is necessary to the commerce of the country. Suppose all the banks shut down on these bills and did not loan a cent on these bills of lading. It would cripple the commerce of the country. Therefore it seems to me it is within the province of the Federal Congress to regulate this bill of lading to the extent that it will make the bill of lading issued by the carrier a measurably safe security—not a security to the same extent as a Government bond, because there are legitimate risks which every banker must take—but a measurably safe security, by imposing certain requirements upon the carrier, requirements which are reasonable, simply requiring him to take up the bill when he surrenders the goods, or suffer the penalty if it is thereafter fraudulently negotiated, and requiring him to issue a form of bill of lading which is so simple that it is no more susceptible of alteration than a negotiable instrument, and requiring him to put the words "order of" in print on that bill, so that it will obviate that form of fraud which has caused numerous losses where the words "order of" are written on the straight bill.

That is the object of this act. It may not be complete. Even since we framed that bill there have been certain things which the committee have considered were unfair, especially section 5, and we have agreed to recommend an amendment by striking it out. But this subject needs regulation, and we present this bill here asking that it be passed by Congress.

Now, the first clause in this measure provides that the bill of lading, to be negotiable, must be drawn to order and have the words "order of" printed thereon. There is nothing harsh in that requirement. It will obviate great frauds to have it printed thereon, the same as the form on the back of the bill. There is nothing harsh in that. Then it goes on to provide the measure of negotiability, its title-conveying force, if I may so speak.

Mr. ESCH. Before you go into that, may I ask you a question? The bill as drawn does not operate within the District of Columbia, does it?

Mr. PATON. It is designed to operate wherever there is interstate commerce.

Mr. ESCH. Would you not have to state specifically "within the District of Columbia?"

Mr. PATON. That was probably an unintentional omission, unless the District of Columbia would come within the designation of a Territory.

Mr. ESCH. It is specified, as a rule.

Mr. PATON. Then the bill proceeds, as I say, to provide for its title-conveying force. It provides—

Such bill shall be negotiable by indorsement and delivery in the same manner as are negotiable instruments for the payment of money, and shall vest the full, complete, and absolute title to the property therein described, and all rights in respect to such property which are or may be contained in such bill of lading in every bona fide holder for value to whom such bill may be transferred, unaffected by equities between the original parties, or any other prior holders.

Mr. RICHARDSON. Allow me to ask you a question right there, will you?

Mr. PATON. Yes, sir.

Mr. RICHARDSON. What do you mean by "unaffected by equities?" Do you mean it should not be governed by any of the infirmities known to the law? For instance, to get my idea clearly before you, if I can: Negotiable paper, bankable paper, as I understand commercial law, is generally in most of the States not subject to any of the infirmities or any of the equities at all between the parties where it started and ended.

Mr. PATON. Yes.

Mr. RICHARDSON. For instance, to illustrate: In some of the States a man who goes as security upon bankable paper and fails to write his name as security, and it falls into the hands of a bank, can not go in there under the statutes of some of the States and say that he was a surety and thereby discharge himself of liability when the notice is given him, for instance, that suit is brought within a certain length of time. That is what you mean by infirmity?

Mr. PATON. That is what I mean.

Mr. RICHARDSON. That is what I understand you to mean. For instance, take it in my State—the State of Alabama. We know more about our own State than we do of other States. The supreme court of Alabama has held, in a case similar to that which I illustrated, that where a man went on bankable paper or negotiable paper and failed to sign his name as security, the court held afterwards, when a suit was brought up between the bank and the security, that he had the right to go into the State courts of Alabama and show by oral proof that he was the security, and that having failed to bring a suit against him according to notice at the first term of court, he was therefore discharged from liability for that bankable or negotiable paper. Now, suppose you put this in this general law, a law made by the Federal Government, by Congress, How would you meet that condition of affairs under the construction of the State laws of Alabama?

Mr. PATON. That would be construed by the general commercial law.

Mr. RICHARDSON. Overriding the State law?

Mr. PATON. The Federal courts would construe this act, and the phrase "unaffected by equities" may be illustrated thus: The carrier who issued this negotiable bill of lading to the shipper may be a creditor of the shipper, and if the bill remained in the shipper's hands he might refuse to deliver the goods, claiming that he had a set-off; but when this gets out into the custom of the world it is free from all claims of the carrier against the original party.

Mr. RICHARDSON. Any equities, conditions, or agreements. That I understand. Now the question I put to you, to find out your opinion about, is this: When this bill provides that such a bill of lading as you are talking about is not liable to any of the equities or infirmities, as you may call them sometimes in law—that is, the agreement between the parties originally—do you not think the law of Alabama would control within its own limits as a State?

Mr. PATON. Not a United States bill of lading. I think not.

Mr. RICHARDSON. I am just getting your views upon it.

Mr. PATON. I think not.

Mr. WANGER. What is the effect of that provision upon stolen goods?

Mr. PATON. I will answer that. Since this act has been printed it has been considered that it would foreclose the title of the owner of stolen goods. If goods were stolen and the thief put them into a railroad, which issued a negotiable bill of lading, which was pledged to a bank for value, the bank would have absolute title to those goods. That result was not intended, and we have drafted an amendment which I was about to suggest. It is a hard thing to do all this at once. It is an important act, and instead of reading "shall vest the full, complete, and absolute title to the property therein described," I propose to amend that language so that it shall read "shall vest all the title to the property therein described, which the first holder of such bill had when he received it." So if the first holder of the bill puts stolen goods into the carrier's hands, the pledgee for value would not be protected as against the property rights of the true owner, and it is not the intention of the banker to foreclose any property rights by this bill. That is an amendment which we propose here to our own bill.

The CHAIRMAN. Please read that again.

Mr. PATON (reads): "Shall vest all the title," striking out the words "full, complete, and absolute," and make it, "shall vest all the title to the property therein described, which the first holder of such bill had when he received it." That is the same as the California statute.

Mr. RUSSELL. Would you not have to eliminate section 5 of the bill to complete that?

Mr. PATON. Yes; it is proposed to eliminate section 5.

Mr. BURKE. I want to ask you three or four practical questions when you reach the stage where it will not interrupt your argument. I am in no hurry about it.

Mr. PATON. Very well. It has also been considered that the word "unaffected," giving the holder the title unaffected between the original parties, would bar the carrier from his lien for freight. Such a result was not intended, and whether it would or not, we had proposed to interline in the same section, after the words "prior holders," the words "but nothing contained in this section shall be construed to deprive the carrier of his right to and lien for freight or

other lawful charges growing out of the carriage or storage of such property."

Mr. RICHARDSON. Do you not think you had better add right there the words, "or other lien recognized by law?" Suppose you had a bale of cotton?

Mr. TOWNSEND. The term "lawful charge" would cover that.

Mr. GAINES. Why not stop with "lawful charge?" Would not that do?

Mr. PATON. I think it would, sir. It is simply to make that so clear that there can be no doubt about it.

Section 1 proceeds—

but any person or corporation to whom such bill is transferred by way of pledge or as collateral security for a debt or for money or other value advanced, shall incur no liability as owner by way of warranty of the genuineness of such bill, or of the quality, quantity, or condition of the property therein described or otherwise.

That clause is put in to protect the security against the laws of certain States.

The CHAIRMAN. Let me ask you, right there, what would be the effect of that? Suppose this person claiming the benefit of that clause were an intermediate holder? Does that destroy or do away with his liability?

Mr. PATON. Not unless he is the pledgee. If he is the pledgee, yes, sir. As a rule, bills of lading do not have successive holders. They are negotiated by the shipper by way of pledge, and the bank holds them until the draft to which they are attached as security is paid and then surrenders them.

Now, it is a rule of the common law that upon the sale of property the seller impliedly warrants the title to that property. There is an implied warranty of it. In certain States it has been held that where a bank acquires a bill of lading as security for a draft it is not a pledgee; it is an owner. It is the buyer of that property, and the owner is the warrantor of the quality and condition of the goods. The result of that is this: A consignment, we will say, of musty wheat is represented by a bill of lading, and is attached to a draft, and the bank discounts that bill. The bank presents the draft to the drawee, to whom the property is to go. The drawee pays the draft; that is, the purchase price of the wheat. He takes it up and then goes to inspect the wheat, and after taking it up finds that instead of its being sound wheat, as contracted for with the shipper, it is musty and inferior. Then he turns around to the bank and says, "You are a warrantor of the quality of that wheat. As owner you warranted the quality of that wheat." In the three States of Alabama, North Carolina, and Mississippi that rule has been adopted, and it has been held that the purchaser who has paid this draft can recover the money paid from the bank to whom he paid it.

Now, that is contrary to all the theory of the law of pledges. A bank which loans on one of these bills of lading as security does not purchase the goods. It takes a pledge of the goods as security. It does not make a buyer's or seller's profit. The man who buys these goods turns them over as a merchant, and makes 10 or 15 or 20 per cent. The bank simply makes interest on the use of its money for a time, and it should not have liability as an owner. In most of the States of this country it is held that there is no such liability. A bill

of lading is simply a security. The bank holds it as a pledge. It is not an owner; but in those three States it is so held, and this clause was inserted to cover that liability and protect that security against the laws of those three States.

Mr. STEVENS. Are you clear that the Congress has a right under the commerce law to control the legislation of those States on that point?

Mr. RICHARDSON. That is what I asked him just now, practically.

Mr. PATON. I believe that Congress under the commerce clause of the Constitution has the power to regulate bills of lading covering interstate commerce, and it has been held by the Supreme Court of the United States away back in 1860, in the case of Almy *v.* California, that a bill of lading is an article of commerce. It is the goods. It is not a mere instrument of commerce, as a check; it is an article of commerce. The State of California imposed a stamp tax on bills of lading which represented gold which was shipped from San Francisco around to New York. On all those bills it imposed a stamp tax. The constitutionality of that law imposing that stamp tax was taken to the Supreme Court of the United States, and it was held to be a violation of the Federal Constitution, which prohibits any State from making or imposing any import tax or duty on imports or exports, without the consent of Congress, except what may be absolutely necessary for executing its inspection laws. And it was held that it would be clearly in violation of the Constitution if the State taxed the goods themselves exported from California, and that the taxing of the bill of lading was the same thing.

Mr. ADAMSON. Is it a fact that the money was receipted for in that case at all?

Mr. PATON. Not money; it might have been potatoes.

Mr. RICHARDSON. The Supreme Court of the United States had held that insurance can not be controlled by the Federal Government.

Mr. PATON. Yes. There is a precedent on that, I think, if you will allow me to cite it. Congress in 1893 enacted the Harter Act, relating to vessels and certain rights and duties connected with the carriage of property, which was approved February 13, 1893, and took effect July 1, 1893. That act prohibited shippers from inserting certain agreements in ocean bills of lading, and provided for the liability of shipowners where the vessel was unseaworthy; and the fourth section of that act provided—

> That it shall be the duty of the owner or owners, masters, or agent of any vessel transporting merchandise from or between ports of the United States and foreign ports to issue to shippers of any lawful merchandise a bill of lading or shipping document stating, among other things, the marks necessary for identification, number of packages, or quantity, stating whether it be carrier's or shipper's weight, and apparent order or condition of such merchandise or property delivered to and received by the owner, master, or agent of the vessel for transportation, and such document shall be prima facie evidence of the merchandise therein described.

And for the violation of any of the provisions of the act it provided a penalty.

Now, if Congress has passed an act making it the duty of shippers to issue ocean bills of lading and to put certain things into those bills, and providing a penalty, why is not that a direct precedent for the power of Congress to enact this bill?

Mr. RICHARDSON. Suppose the transaction was between two banks, one at Birmingham, Ala., and one at Mobile, Ala. Do you think this

bill, if enacted as a law of Congress, would control it if the transaction commenced at Birmingham?

Mr. PATON. If it represented goods shipped from Birmingham to Mobile, no, because that is not interstate. This only controls shipments that cross State lines. The other matters are matters for the State to deal with.

Mr. RICHARDSON. You look upon this in a different light from what you look upon insurance or other business?

Mr. PATON. That is not interstate commerce.

Mr. RICHARDSON. I get my policy in New York and I live in Alabama.

Mr. PATON. That is not goods. Commerce is the interchange of merchandise. A bill of lading is merchandise, but an insurance policy is not merchandise.

Mr. ADAMSON. Do you think that the commerce clause of the Constitution, providing for the regulation of commerce and carriers, should be so construed and extended as to compel the common carriers to look out for the financial operations of the consignors and the consignees?

Mr. PATON. I do, sir, as provided by this bill, for this reason: It is a necessity to the commerce of this country that the shipper shall borrow money to make shipments. Otherwise he can not do it.

Mr. STEVENS. He must insure it in a similar way, just as he must borrow money?

Mr. PATON. Yes, but an insurance policy is a contract or guarantee with reference to the property, whereas this is the property itself. There is a difference between an insurance policy and this.

Answering this gentleman's question, I do think that Congress should regulate it, because it is a necessity to the commerce of the country that these shippers should be able to borrow money. They could not conduct the business of the country unless they did borrow money, and it is therefore within the province of Congress to provide means by which they can borrow money and carry on this vast interstate commerce in a way that would be safe to all hands.

The different States have attempted to regulate this subject. They have recognized the necessity of securing the pledgee of these bills of lading, and what do we find? In about fifteen States different statutory provisions, making bills of lading negotiable in the same manner and in all respects the same as the bills of exchange. That is further than this goes. Then in other States we find laws which compel the carrier to take up the bill in that way and provide a criminal penalty if he does not. That is the case in New York. It is "confusion worse confounded" to attempt to regulate it by the laws of forty-five different States.

Mr. MANN. Does not all you say apply to insurance also?

Mr. PATON. I think not.

Mr. MANN. You can not ship all other property by rail and get money on it?

Mr. PATON. No.

Mr. ADAMSON. Does not all you say apply to a limited extent to all men engaged in any kind of business in this country?

Mr. PATON. No, sir.

Mr. ADAMSON. There are uncertainties in all business and risks exist in all cases?

Mr. PATON. Yes, but this is an uncertainty to the continued carrying on of business.

Mr. ADAMSON. All men that have not money want to borrow it.

Mr. PATON. Probably $3,000,000,000 is loaned by the banks each year. There are banks which can not continue loaning in conformity with their conscience and sense of duty to their stockholders and to their trust unless they have security.

Mr. RICHARDSON. That puts them out of business, does it not?

Mr. PATON. It puts the shipper out of business—the small shipper. The big shipper can borrow money on his own security, but the bank will not trust the small shipper.

Mr. RICHARDSON. It takes business away from the banks?

Mr. STEVENS. I do not think your argument applies in section 1 to lines 4 to 9. As it occurs to me, you admit that the State has the right to effect an obligation, by a statute, to property, or a bill of lading in the way of warranty, as some of the States do. The State has an undoubted right to do it. You do not dispute the fact.

Mr. RICHARDSON. The State of Alabama could impose a tax on commerce between Mobile and Birmingham, and Congress could not interfere. Now Congress has the right under the commerce clause of the Constitution, the moment that bill crosses the State line, to say that that right shall not inhere.

Mr. PATON. Yes. It then comes within interstate commerce and comes into the province of Congress.

Mr. STEVENS. Congress shall state that a negotiable instrument made in a State, with certain obligations indorsed by the State, clearly constitutional within the State, shall be changed by an act of Congress?

Mr. PATON. It is a property right and next to an article of commerce. And when that article of commerce crosses the State line, then it comes within the province of Congress to regulate it.

Mr. TOWNSEND. I understand that the Supreme Court has decided that case—the Supreme Court in the case of Almy *v.* California.

Mr. PATON. Yes. There is a very recent case. In the Central of Georgia Railway Co. *v.* Murphy (196 U. S., 194), decided by the Supreme Court of the United States in January, 1905, a statute of Georgia having application to shipments of freight made to points outside as well as within the State, required the carrier to trace lost freght and inform the shipper how it was lost, damaged, or destroyed. The question was whether the statute, when applied to an interstate shipment of freight, was an interference with or regulation of interstate commerce, and therefore void. The court held it was. It said the effect of such a statute is direct and immediate upon interstate commerce. It directly affects the liability of the carrier of freight destined to points outside of the State, with regard to the transportation of articles of commerce; it prevents a valid contract of exemption from taking effect, except upon a very onerous condition, and it is not of that class of State legislation which has been held to be rather an aid to than a burden upon such commerce. The statute in question prevents the carrier from availing itself of a valid contract, unless such carrier comply with the provisions of the statute by obtaining information which it has no means of compelling another carrier to give, and yet, if the information is not obtained, the carrier is to be held liable for the negligence of another carrier over whose conduct it has no control. This is not a reasonable regulation in aid of interstate commerce, but a direct and immediate burden upon it.

Mr. RICHARDSON. You do not apply that decision to the principle under discussion here?

Mr. PATON. I cited that for this purpose, to show that that was lawful as long as it applied to shipments within the State.

Mr. ADAMSON. In order to be in line with your argument, Congress ought to adopt that as a part of the interstate commerce act. All the matter there was with that was that it was not an act of Congress of the United States, but an act of the State of Georgia.

Mr. PATON. That is it, but that is an unreasonable burden on the carrier.

Mr. ADAMSON. If that is so, there have been a lot of unreasonable burdens imposed upon people.

Mr. PATON. I cited that simply on the general proposition that in this subject of bills of lading, which represent interests in shipments, it is very doubtful whether the States have the power to regulate them, and there should be some regulation, and that it is within the province of Congress to do it.

Mr. STEVENS. You do not maintain that that Central Georgia case would control the principle of those lines that I read to you?

Mr. PATON. No, sir; we digressed there a little.

Mr. MANN. What do you mean by saying that in lines 9 and 10 on page 1—

Such bill shall be negotiable by indorsement and delivery in the same manner as are negotiable instruments for the payment of money?

Mr. PATON. I mean exactly what the Supreme Court of the United States means in the case of Shaw *v.* Railroad Company, in 101 U. S., 557. In that case a statute was involved, as to bills of lading, which provided that they should be negotiable in the same manner as bills of exchange for the payment of money.

Mr. MANN. What did the courts hold?

Mr. PATON. It was urged in that case that that gave the holder the same right in all respects as the holder of a bill of exchange. It gave the right to the property which was stolen as against the true owner. But the court held that the statute could not be construed as altering the common law any further than was expressly stated in its words, and it construed those words as meaning that a bill shall be negotiable in the same manner by indorsement and delivery, so that the title shall be transferred in the same manner. That is, you turn over the title by indorsing it over; but that it did not carry the full effect of a negotiable instrument; that it was simply the regulation of the manner of transfer, but it was not in all respects a negotiable instrument; and if the legislature had so intended, they would have said so in express words.

Mr. MANN. Is the manner of negotiating a note exactly the same in all the States?

Mr. PATON. I think so. The uniform negotiable-instruments law has now been enacted in thirty of the States.

Mr. MANN. Not in all of them?

Mr. PATON. No; but the common law governs in the others.

Mr. MANN. Would this mean according to the common law or according to the statutory law of that State, or the statutory law of the State where the bill of lading was issued?

Mr. PATON. That would mean according to the commercial law of the United States, as construed by the Supreme Court of the United States.

Mr. MANN. The Supreme Court, in its construction, construes the State law, and of course followed the State construction of the negotiability of a note. Now we have no Federal law on that subject except——

Mr. PATON. You have a negotiable-instrument law in the District of Columbia?

Mr. MANN. Yes; but that does not apply. We have no Federal law on that, except as the courts may follow the common law. Would it not be better, if you put anything in here, to define what you mean—what you have there advanced, what is meant by one particular State law? I have read the decisions.

Mr. PATON. That phrase is defined as having a certain meaning by the Supreme Court of the United States.

Mr. MANN. As applied by a State law in a State which had a special law governing the negotiability of instruments.

Mr. PATON. In that respect the State law was, I believe, no different from the general commercial law. It is uniform. All negotiable instruments are transferable by indorsements, and then they go by delivery—whether by State law or common law, it is the same. That is settled.

Now as to the second section of this act—may I proceed?

The CHAIRMAN. Go ahead.

Mr. PATON. The bankers will want to give the practical side of this question. I am simply attempting to show what the bill covers. The second section provides—

That the property described in a negotiable bill of lading shall be delivered only upon surrender of such bill properly indorsed, and the bill shall thereupon be canceled, except in case of partial delivery, when statement of the same may be indorsed upon said bill. An outstanding unsurrendered negotiable bill of lading shall continue to be negotiable, notwithstanding the property therein described has been delivered to the legal owner of such bill so far as to vest in any subsequent bona fide holder without notice the right to require from the crrrier the full value of the property therein described.

Mr. ADAMSON. Do you understand under existing law that when an authorized agent of a carrier issues a bill of lading reciting that the goods shall be held and not delivered except upon the surrender of that paper, whether in the hands of the original party or assignee—do you understand that the original party can give it to you and the railroad escape liability?

Mr. PATON. I can cite the decision on that of the New York court of appeals.

Mr. WANGER. Was not that an altered bill of lading?

Mr. PATON. No, sir. I explained the reason for that. That property was delivered to the legal owner. Therefore the bill had no validity. It was used up. It was a spent bill.

Mr. ADAMSON. Did that bill recite the terms I mentioned, that it should not be delivered except upon surrender of the bill of lading?

Mr. PATON. Yes; and the court held that I should deliver the property to you only when you gave me that bill. Now, I have given you the property. I have given it to the legal owner. I do not take up the bill.

Mr. ADAMSON. Has that same court held that when I give you my note and pay it off before it is due, and you make off with it, it must be paid again?

Mr. PATON. No; it is not in due course, sir——

Mr. ADAMSON. The other is not due, either, and does not mature until you present it—the bill of lading; that is, the contract that is put in it.

Mr. PATON. I can not go against the settled decisions of the courts.

Mr. MANN. If it were a note and it was paid and due——

Mr. PATON. Then it would be the same rule.

Mr. MANN. And then somebody negotiated it, it would not be good?

Mr. PATON. No, sir.

Mr. MANN. Do you propose, if it is a bill of lading, it shall be good for three years, or indefinitely?

Mr. PATON. Yes.

Mr. MANN. You want to make it good forever?

Mr. PATON. No, sir. There is a statute of limitations in most of the States.

Mr. MANN. There is no statute of limitations here. The State law would have no control of this. You say "forever" in the bill.

Mr. ADAMSON. I misunderstood you. You say if the note was paid before maturity and held until maturity, it could be collected again?

Mr. PATON. Yes.

Mr. ADAMSON. A great many notes are written payable in advance. In the agricultural districts they say, "On a certain day we will pay to A B, on order or bearer, so much cotton, at such and such a date." In what respect does that differ from the railroad's contract that they will deliver so much freight to the holder of this receipt?

Mr. PATON. It is in theory about the same thing, I suppose. But I suppose those contracts do not enter into commerce in the way these bills of lading do.

Mr. ADAMSON. Why not?

Mr. CLAYTON. Because they are not used in the transportation of the property of the country.

Mr. ADAMSON. I am not speaking of the use you make of the property or how you handle it; but the language of the obligation certainly controls the title.

Mr. PATON. Why is it unfair, when a railroad company says, "We will take up this bill and deliver the property," to hold it liable if it does not do that? Why is it unfair to hold the carrier to that liability?

Mr. ADAMSON. I do not think it is unfair to hold them to anything they agree to, and I think they are held to it already now.

Mr. PATON. You can not loan money on these if they are no good at all. Even in the case of a Chinese laundry ticket, the Chinaman says, "No ticket, no shirtee." You can not get your shirt out of the laundry unless you give up your ticket.

Mr. ADAMSON. You want to make it easier for the banks to do this certain kind of business and exempt them from the uncertainties that other business men are subject to?

Mr. PATON. I do not think so, sir. I think it is a necessary security.

Mr. TOWNSEND. The railroads issue these bills, in the first place, with the idea that they are to be negotiated for these loans?

Mr. PATON. That is the idea.

Mr. TOWNSEND. And they now state on the back that they will hold them until the bill of lading is surrendered?

Mr. PATON. Yes, sir.

Mr. TOWNSEND. And now you have discovered that there are cases which, on some technical grounds, have resulted in loss to the banks?

Mr. PATON. Yes.

Mr. TOWNSEND. And you are asking that that bill of lading shall by law be made to mean what it says?

Mr. PATON. That is exactly it.

Mr. TOWNSEND. Do any of the railroads object to this thing being carried out as you intend it?

Mr. PATON. I believe not. Some may object. I know some do not.

Mr. TOWNSEND. Do any of them deny that they are issuing these bills of lading for the express purpose set forth in this bill?

Mr. PATON. No. That is the theory and idea of the contract.

Mr. RYAN. Do you designate the form of the bill of lading, or do you leave that to the railroads?

Mr. PATON. This bill designates the form, as you will see on the last page.

Mr. RICHARDSON. You are trying to make the railroads comply with the promise that they make in that bill of lading now? They make the promise, and you are trying to make a law to make them comply with that promise?

Mr. PATON. Yes; to make that promise mean something.

Mr. RICHARDSON. I understand the purport of this bill is to make them do what they promise. I understand what you are after. Why can you not make them now do that?

Mr. PATON. It strikes me they should be liable, but the courts have held they are not.

Mr. RICHARDSON. I do not see how a railroad or common carrier can——

Mr. PATON. Has not that spent-bill proposition been so decided in New Jersey? I think it is a very bad law.

Mr. MANN. Is not the way they get around it by making the bill nonnegotiable? Does not that settle the whole business?

Mr. PATON. Yes. The banks will not loan on them, and that will cripple the commerce of the country.

Mr. MANN. Are they not all marked nonnegotiable?

Mr. PATON. Yes; but there is at the same time a clause in it which makes it negotiable.

Mr. BURKE. Would it not be possible to ascertain whether the goods described in the bill of lading have been delivered or not?

Mr. PATON. Mr. Pierson, will you be good enough to answer that question?

Mr. BURKE. I have several practical questions that I want to ask you.

Mr. WANGER. Is there anything in this bill that applies to nonnegotiable bills of lading?

Mr. PATON. In section 7 the common carrier is prohibited from inserting "nonnegotiable" in any bill of lading or from nullifying its provisions by any inconsistent provisions.

Mr. RUSSELL. Is not this the situation, that these bills of lading, in the absence of an agreement between the parties, would not be negotiable unless there was a statutory regulation making them negotiable?

Mr. PATON. Yes.

Mr. RUSSELL. You want to make it apply to interstate transactions?

Mr. PATON. Yes; you can not make it negotiable except by contract.

Mr. ADAMSON. Do you not want to make them enter into a contract which they do not want to make?

Mr. PATON. The proposition is to force the carriers to issue a fairly safe and negotiable security.

Mr. ADAMSON. Do you think it is a good policy or good legislation in this country for Congress to force people to make contracts that they do not want to make?

Mr. PATON. In the Harter Act Congress forced them to make a contract.

Mr. ADAMSON. They may prohibit them from putting certain things in places and make it illegal to do such things.

Mr. MANN. May I ask you your opinion whether the passage of this bill would not transfer to the Federal courts all litigation concerning bills of lading?

Mr. PATON. I would think so, offhand. It is the construction of a Federal statute. In the national-bank act—I know there are actions of usury brought under the national-bank act in the State courts.

Mr. BARTLETT. That is under special arrangement. The language is, "Any right claimed by reason of the Constitution of the United States or any law passed in pursuance thereof." This act would pass, if passed at all, in pursuance of the Constitution of the United States, and any right claimed under it would go to the United States circuit courts.

Mr. ADAMSON. Do you not think it would result to some extent in maintaining the present condition of affairs financially in the country and prevent the coming of the day when the vast products of the West and South would be moved without having to borrow money from the Eastern banks? [Laughter.]

Mr. PATON. That is rather a question of political economy.

Mr. BARTLETT. So far as the South is concerned, that condition has been here for four or five years.

Mr. ADAMSON. I think that is the African citizen in the wood pile, myself. [Laughter.]

Mr. TOWNSEND. Are you seeking to force the railroads to make contracts?

Mr. PATON. I understand that at common law it is the obligation and duty of the common carrier not only to receive the goods for carriage, but also to issue a bill of lading, to make a contract, to issue a receipt; and the purpose of this is simply that you shall make that receipt have a certain effect, to mean what they say. They are under obligations to issue a certificate.

Mr. BARTLETT. You do not mean there is any obligation under the common law to require a carrier to issue a bill of lading?

Mr. PATON. I think the long-standing custom has crystallized into common law.

Mr. RICHARDSON. If you had a law to make them comply with it, you would make them issue. You would not want an additional law if you had some way to make them comply with the promise they have already made?

Mr. PATON. That is it exactly.

Mr. RUSSELL. You want to make them comply with certain requirements that they now do not comply with in certain instances?

Mr. PATON. Yes.

Mr. STEVENS. Before you leave section 2 I would like to ask you some questions, particularly as to the last sentence of section 2—its construction in connection with the amendment you made to section 1, by which the bill shall vest the title which the first holder has. Now, out in our northwestern country, supposing an elevator man issues an elevator receipt, an ordinary receipt for grain stored, and then he puts the grain in the car and gets a bill of lading to himself, and then he negotiates that bill of lading; under section 2 the title to that, to him, would not be complete when he obtained his original bill of lading. Now, if he received the property that bill of lading would be outstanding if it were not surrenderable, and the carrier would be responsible, would he not, to the owner of that grain?

Mr. PATON. Until he took it up; yes.

Mr. STEVENS. That outstanding bill of lading could be negotiated, although the grain was actually owned by somebody else?

Mr. PATON. No; in that event it would not carry any title to the pledgee.

Mr. STEVENS. Would it not under the last two or three lines under that section 2? That is what I wanted to find out—your construction—although you have made that amendment in section 1. Will you not have to amend that section 2 also to conform to your amendment to section 1?

Mr. PATON. It should be amended in that particular.

Mr. STEVENS. That is what I wanted to find out.

Mr. PATON. Yes, sir. Section 3 provides—

That every negotiable bill of lading issued by a carrier, or by the agent of a carrier, authorized to issue bills of lading in the hands of a bona fide holder for value shall be conclusive evidence as against the issuing carrier that the goods therein described have been received, notwithstanding there has been no delivery or only a partial delivery to such carrier of such goods.

That section is meant to cover that form of fraud where the freight agent issues a bill of lading fraudulently where there have been no goods received from the shipper.

Mr. BURKE. What about that proposition asked by Judge Russell this morning?

Mr. MANN. What about cotton and cotton waste? Is it necessary for the carrier to open the cotton bale to see what it contains?

Mr. PATON. I would suggest adding, to make that clear, that "this section is not to be construed as making the carrier the warrantor of the contents of the packages described."

Mr. WANGER. That it does not make him the warrantor?

Mr. PATON. No. That has been so held with regard to warehouse receipts. There is a case where a thousand barrels of Portland cement, or a thousand barrels which, it was supposed, contained Portland cement, but which did not amount to anything and which was worthless, were put into a warehouse and a negotiable warehouse receipt issued, and the holder of that negotiated it to the bank for value, and the bank found out that there was nothing to the cement.

Mr. ADAMSON. Do you think the railroad could be heard to vindicate its own rascality in a case like that? Do you not think under all law it could be collected against the railroad?

Mr. PATON. I understand the railroad does not know anything about it in that case. That case went up to the court of appeals. The bank

says to the warehouse, "We hold your warehouse receipt for a thousand barrels of Portland cement." And the court held that the warehouse did not warrant the contents of the barrel, that it simply warranted the contents to the extent that these barrels had the appearance of containing Portland cement. They did not guarantee that there was Portland cement in there.

Mr. RUSSELL. Do you have a statute in that case covering it, like this section 3 here?

Mr. PATON. No, sir; for that reason we are adding it here as a section.

Mr. ADAMSON. If the carrier gave the receipt and the goods were not there, in such a case——

Mr. PATON. This provides that the carrier shall be responsible.

Mr. ADAMSON. You do not claim under existing law that the carrier could be heard to set up his own fraud?

Mr. PATON. That was the fraud of his agent.

Mr. ADAMSON. What he does by the agent is done by himself.

Mr. PATON. That is a matter of conflicting law, or conflicting decision. In some States it is held that the act is within the authority of the agent, and that it binds the carrier where he issues a spurious bill with no goods behind it. In other States it is held that it is beyond the scope of the authority of the agent; and it was to make the agent liable that this section was put in, but it is not to make him warrant a thousand barrels of mud to be a thousand barrels of Portland cement.

Mr. RICHARDSON. This question, as I understand it, is used as an illustration, to which Brother Mann referred, about a hundred barrels of cotton being shipped and a bill of lading attached, with the draft representing that there were a hundred bales of cotton; and it went to New York and it turned out when examined there that it was short 20 bales of cotton, and he said that the trouble was that the banker would be made responsible. Do you not think he ought to be? Say, for instance, a man ships from my town, Huntsville, Ala., a hundred bales of cotton with a bill of lading attached and a draft on New York, and he states that there are a hundred bales of cotton, and the banker in New York is misled by it, and instead of there being a hundred there may be 90 or 95, or some other quantity. Ought not the banker to be made responsible, to pay the difference? Ought not he to be made responsible? They have got the warehouse man under bond. He gives him the correct weight.

Mr. PATON. If he has the opportunity of inspection; but the pledge is not always in the same town.

Mr. RICHARDSON. He conforms to the usual, ordinary, customary practices of the country, and he ought to be made liable.

Mr. PATON. Of course that is a debatable question.

Mr. RICHARDSON. That is the principle that your colleague was going on. I think that banker got just what he deserved.

Mr. PATON. In another town a banker, for example, could not travel to that town to find out whether that were a hundred bales or 90 bales.

Mr. TOWNSEND. The bank does not issue that?

Mr. PATON. No; the carrier issues it.

Mr. TOWNSEND. You are not seeking to make the carrier the guarantor for the quantity or quality?

Mr. PATON. For the quality, but not the quantity; for the quantity of sealed packages.

Mr. STEVENS. If the bill described Portland cement, it would mean Portland cement?

Mr. PATON. Not if there is no such intention.

Mr. STEVENS. It says it shall be conclusive evidence against the carrier.

Mr. PATON. We add to that "This section is not to be construed as making the carrier the warrantor of the contents of the packages."

Mr. STEVENS. What is the use of putting the word "conclusive" in there?

Mr. PATON. That is when there is no property at all delivered.

Mr. ADAMSON. Under what authority do you hold that the duly authorized agent of the railroad in business is less able to bind his company than the cashier of a bank is able to bind his company? Is it not the same under existing law?

Mr. PATON. No, sir; it is not.

Mr. MANN. Who loads the cotton—the railroad or the owner?

Mr. PATON. That is not a banking question.

Mr. MANN. As a matter of fact, the owner loads it on the car.

Mr. BARTLETT. Oh, no.

Mr. MANN. Where a man ships a carload of anything else, he does. He takes the cotton or other article and puts it in the car, and he produces a statement to the agent of the railroad company of what he puts in the car. He has a minimum and a maximum of weight. Do you propose that the railway agent shall stand at the door of the car and watch everything that goes in?

Mr. PATON. It seems to me, as a lawyer, that it is very loose practice for a man to sign a paper saying he has received something that he has not received.

Mr. MANN. It is his interest to get the freight on it. It sometimes happens that a man takes out $5,000 of insurance on a house worth $1,000, and the house burns down and he gets the insurance; but it is not often done.

Mr. ADAMSON. I have yet to hear of a case where a railroad does not find out what it is hauling.

Mr. MANN. In many cases they do not pay any attention to it.

Mr. PATON. Section 4 of this act provides for the subject of alteration. It says:

That any conventional alteration, addition, or erasure in or to a negotiable bill of lading which shall be made without the special notation thereon of the agent of the carrier issuing such bill shall be void, and any unauthorized or fraudulent alteration, addition, or erasure in or to such bill of lading shall also be void, and in any of the above cases such bill of lading shall remain wholly unaffected.

Mr. STEVENS. On that section 3, do you not think that there is some inconsistency in there in connection with that language in section 1 which I referred to in connection with section 2? I refer to that language at the bottom of page 1 and the language at the bottom of page 2. The title of the first holder is carried by the bill. Now, here you provide in section 3 that every negotiable bill of lading issued by a carrier or his agent shall be conclusive evidence as against the issuing carrier that the goods therein described have been received. The bill describes not only the goods, but the packages, and what

goods are in them, and it describes the owner, and it is conclusive evidence against the carrier that that is the condition.

Mr. BARTLETT. Speaking about cotton, Mr. Stevens, cotton is shipped by weights. It has certain marks on it.

Mr. STEVENS. No; I am speaking of goods like cement, in which there are certain packages. It seems to me you have an inconsistency here.

Mr. PATON. I propose to amend that by adding that the section shall not be so construed.

The CHAIRMAN. What is that language that you propose?

Mr. RUSSELL. He suggested this language:

Provided, That this section shall not be construed to make the carrier a warrantor.

He suggests this:

Provided, That in case this carrier acted in good faith in issuing the bill of lading, then its liability shall be limited to what the actual value of such property is.

Mr. MANN. The amendment read by Judge Russell would not cover the case where a man fraudulently imposed on the railroad company.

Mr. RUSSELL. No; it was not designed to.

Mr. MANN. Suppose a man, for fraudulent purposes, shipped cotton waste instead of cotton. It is perfectly plain that the railroad, which has no option in the matter at all, ought not to be held to a more strict liability than the man who has made the deal or be made more liable in the losses.

The CHAIRMAN. It would be at that section that the proviso should come in that the gentleman has suggested. What would be the value of section 3 with the proviso that the section shall not be construed to make the carrier a guarantor of the quality or quantity of the property? What is there left after that is inserted?

Mr. PATON. If the agent of the carrier sits down and signs a bill of lading for a hundred or a thousand barrels of potatoes and gives it to the shipper, and the barrels of potatoes exist only in his imagination, and the shipper negotiates that bill for value, that section would bind the carrier to the value of that property.

The CHAIRMAN. Not with this language inserted there—

Provided, That this section shall not be construed to make the carrier the guarantor of the quality or quantity of the property.

It seems to me it is going up the hill and then down again. [Laughter.]

Mr. PATON. I would like to say as to that that this subject was only talked over last night, and there has hardly been time to technically frame a correct amendment. The idea was there. Judge Russell suggests this, which to me seems better:

Provided, That in case the carrier acts in good faith in issuing the bill of lading, then its liability shall be limited to what is the real value of such property when received.

That makes the distinction between bills in good faith and fraudulent bills.

Mr. ADAMSON. What will you do if it is not in good faith? Double the penalty?

Mr. PATON. Make them give the value of it as described.

The CHAIRMAN. If the agent of the carrier is acting in good faith, then that will open up all the equities between the parties; but if the carrier is the victim of a dishonest agent, then that closes all inquiry as to these equities.

Mr. PATON. It makes the carrier liable.

The CHAIRMAN. The rightfulness of the law would hinge, then, not on the question of the ignorance or inefficiency of the agent, but on the fraud of the agent?

Mr. PATON. Yes.

Mr. MANN. Take the case of shipping flour. You referred to cotton a while ago. The millers usually load their own cars with barrels of flour. The agent signs a bill of lading as a matter pro forma. Do you propose to have the agent count the barrels of flour, or else accuse him of not being in good faith?

Mr. PATON. I should think the agent would count that flour and see what he is issuing.

Mr. MANN. It would certainly revolutionize the methods of loading freight on cars in this country. Here is a train load of flour. I suppose the mills in Minneapolis turn out many train loads of flour every day, loaded upon the sidings.

Mr. PATON. I think any other way would be loose business. That is what bankers say. It should be checked up.

Section 4, as I said, is the alteration clause. It provides—

That any conventional alteration, addition, or erasure in or to a negotiable bill of lading which shall be made without the special notation thereon of the agent of the carrier issuing such bill shall be void, and any unauthorized or fraudulent alteration, addition, or erasure in or to such bill of lading shall also be void, and in any of the above cases such bill of lading shall remain wholly unaffected.

The object of that clause is to make the bill good according to its original tenor. That covers the case of fraudulent alteration, or alterations by agreement, which have not been noted on the bill of lading, and the object is to make the bill good for its original tenor.

Mr. MANN. You see what I mean by that. A great many of the bills of lading are prepared by the shipper himself—that is, the written part is written out by him and signed by the agent. Your proposition is that if there is any alteration in that bill, instead of destroying it, to have the agent of the railroad company make a notation on the bill in his own handwriting?

Mr. PATON. Yes.

Mr. MANN. How would a banker know that it was his handwriting?

Mr. PATON. By the signature on the bill.

Mr. MANN. Suppose I had a bill of lading and I made the annotation there and signed it: How would the banker know who signed it?

Mr. PATON. It is a risk that the bank must take.

Mr. MANN. What good does it do? The purpose of this is to prevent fraud, and yet you leave it wide open to the man who wants to commit fraud.

Mr. TOWNSEND. Here is the situation, Mr. Mann, that they are seeking to guard against: These bills of lading have annotations upon them, written in pencil and signed by anybody. Now, the shipper will write an annotation in pencil on the bill of lading when he

would not, under this bill, write that annotation and sign an agent's name to it. Their proposition is that the writing must be done by the agent authorized to make that signature.

Mr. MANN. Here is a man who wants to commit fraud, for instance, and he has a bill of lading. What is to prevent him from making an annotation on there?

Mr. TOWNSEND. The bank takes that risk. He is not asking to be relieved from that.

Mr. MANN. What possible benefit or protection would it be against a man who wanted to commit a fraud when you leave it open for him to do that?

Mr. ADAMSON. The local bank must take its risk.

Mr. PATON. This section says:

That any conventional alteration, addition, or erasure in or to a negotiable bill of lading which shall be made without the special notation thereon of the agent of the carrier issuing such bill shall be void.

Mr. MANN. And that is a dead letter. You think you will revivify it by putting it into law, yet it seems to me you will not be a particle better off. I want to help you to cover it.

The CHAIRMAN. Will you define the word "conventional," in line 3 of page 3?

Mr. PATON. By agreement between the parties, as distinguished from a fraudulent alteration; by agreement.

Now, going on to section 5——

Mr. BARTLETT. When you get through with that I would like to ask the witness one or two questions, Mr. Chairman. [To the witness:] The carriage of freight, whatever it may be, is compulsory upon all carriers, is it not?

Mr. PATON. So I understand it.

Mr. BARTLETT. When delivered to the carrier, whatever the freight may be, the carrier is compelled to receive it and to carry it according to the direction of the shipper from one destination to another, provided the shipper pays, or agrees to pay at one end or the other, the freight charges. In my own State of Georgia it is made a misdemeanor for a carrier to refuse to give a receipt for the goods and delivery. He must not only carry, but he must give a receipt of the character of goods and their weight, and so forth.

The present law makes the carrier, whether he contracts or not, carry as a matter of law, and now you want to make it a fact by law—by a mere simple receipt of the carrier to the effect that he has received a certain amount of goods, describing them—that the bill shall be negotiable by delivery rather than by enforcement; and not only that, but you want to make the carrier liable in case the shipper and clerk or agent at the receiving depot of the carrier shall combine together for the purpose of fraud or depriving somebody—a bank, if you please—of its rights, and you want to make that fraud rest altogether upon the carrier.

Simply because the shipper and the carrier's agent enter into a false agreement or false statement to the effect that the carrier has received certain shipments when it has not, you propose to make the carrier liable for the full amount of the alleged goods. In other words, you want to shift from the shoulders of the banks, or the persons who lend upon the receipts, the responsibility or duty of requir-

ing the fulfillment of the contract, whether it was a bona fide transaction or not. You want to relieve or shift that duty from the shoulders of everybody else and place the burden upon the railroads alone. That seems to be the purpose of the bill.

Mr. PATON. As to making the carrier liable for a fraudulent bill of lading, that is something undertaken by the carrier himself in clause 9 of the present form of bill of lading, wherein he agrees to take up the bill of lading when he delivers the goods. This act only wants to make that agreement effective.

As to making the carrier liable for a fraudulent bill of lading made out by his freight agent, that is a liability that is now provided by law in many States.

Mr. BARTLETT. You make him liable also for the fraudulent conduct of the men to whom the fraudulent agent delivers a fraudulent bill of lading. You want to make him liable for the act of both people.

Mr. PATON. If he colludes, then he is guilty of collusion. I think it would be a wise thing to add a section making it a criminal offense and providing a penalty, that any agent of a carrier who fraudulently issues a fraudulent bill of lading for which the whole or any part has not been received at the time of issue, or any agent who receives such bill fraudulently, which issues or surrenders such bill for purposes of negotiation, is guilty of misdemeanor and is punishable by fine of not less than $5,000, or imprisonment for a term, say, of five years, or both. I would provide also that any person, not being the owner or the authorized agent of the property, who delivers such property to the carrier and receives therefor a negotiable bill of lading should be deemed guilty of a misdemeanor, punishable by a fine of $5,000 or imprisonment for five years, or both.

Mr. BARTLETT. Do you not think those acts of deceit and fraud therein described are taken care of and can be taken care of by the various States?

Mr. ADAMSON. I was going to ask you do you believe there is a single State of the Union where you can not do that now without legislation here?

The CHAIRMAN. This is certainly a very important matter, and deals with very large interests; and evidently, from the amendments that have been suggested by yourself and others, the bill as the Bankers' Association prepared it is somewhat immature in its character. I was going to suggest to you, if it would suit your convenience and you would prefer it, that the committee take a recess now, until to-morrow morning at half past 10 o'clock, in order to give you an opportunity to put in such perfect form as you choose your ideas with regard to this desired legislation. I simply make this suggestion to you. Or you can go on offering these amendments from time to time, or you can take this other course; just as you please.

Mr. TOWNSEND. Yes; and make enough copies of it so that we can all have them to-morrow morning.

The CHAIRMAN. I make that suggestion to you. I have no doubt the committee will be glad to meet you to-morrow morning at half past 10.

Mr. TOWNSEND. If you have not anything important to do which will require you to adjourn now, could you not call upon others outside the city here, who have to return home this evening, and ask them as to their ideas with respect to the necessity of this legislation?

The CHAIRMAN. Very well.

Mr. TOWNSEND. Then I will introduce Mr. Evans.

The CHAIRMAN. We will be very glad to hear you, if you please, Mr. Evans.

STATEMENT OF MR. C. M. EVANS, OF WILMINGTON, N. C., PRESIDENT OF THE NORTH CAROLINA BANKERS' ASSOCIATION.

Mr. TOWNSEND. First give your full name and address and business, and so on.

Mr. EVANS. I am cashier of the Southern National Bank, of Wilmington, and president of the North Carolina Bankers' Association.

The CHAIRMAN. Proceed now, if you please. Take your own course in discussing the necessity for this legislation.

Mr. EVANS. First, I will say, sir, that in an experience of about twenty-two years in the banking business in our State I have had thousands of transactions in which bills of lading have been the basis of security. I have known of instances, in my own experience and in the experience of bankers in the same neighborhood and in the same State, in which the banks have suffered loss by reason of the complex form or agreement which we find in the average bills of lading. I know that in lending money on cotton, as we do principally on these bills of lading, we have come to look upon a bill of lading as affording the same measure of security that a bonded-warehouse receipt affords, and we think it should afford the same. Yet it does not, and there is this difference: A bonded-warehouse receipt undertakes to deliver to the holder of that receipt, or to the party to whom the receipt is indorsed, a certain number of bales of cotton of a certain weight, of a certain grade, and you can go and get that cotton, and that warehouse receipt is a negotiable instrument which the bankers take very readily and lend their money upon with impunity.

Now, then, when it comes to a bill of lading, if the bonded-warehouse companies can undertake to approve and check these bills of cotton as received, and give their negotiable receipts, from which they can not evade payment, we think that the railroad companies, expecting these bills to be treated as a similar security, should do as much. They should check the cotton. The gentleman [Mr. Mann] says the railroad companies do not check them. I worked with a railroad company myself, and I had that particular work to do; and I have never known a bill of lading to be placed against a carload of goods where the agent or clerk of the company was not right there. The man who owns the cotton may load it, or the man who owns the flour may load it; but standing right there is the clerk of the corporation or railroad company, whose duty it is to check every article as it is placed in that car.

Now, then, as the railroad company does check and prove the receipt of these articles, we claim that the holder of their receipts should have the same measure of protection as he has when he holds a bonded-warehouse receipt, where we do such business on these bills of lading as we do on the bonded-warehouse receipts; and we never have a question about warehouse receipts, but we do have respecting these bills of lading.

Mr. TOWNSEND. Could not the banks get along anyway without doing business with these bills of lading?

Mr. EVANS. Of course they could.

The CHAIRMAN. Is there any necessity for the railroad company to issue any other paper than that one which merely recites that it has received so many bales of cotton from Mr. A. B.?

Mr. EVANS. There is none, sir, except to provide——

The CHAIRMAN. The law does all the balance?

Mr. EVANS. That is right, sir—that is, now, if you want to make a negotiable bill of that receipt.

The CHAIRMAN. No; I am simply talking about the obligation of the carrier created by statute. There is nothing more required of him than to give that receipt?

Mr. EVANS. That is all.

The CHAIRMAN. Then the law imposes upon him the duty. It is not a contract; it is a duty to deliver that property?

Mr. EVANS. Exactly.

The CHAIRMAN. Now, this bill proposes to change entirely that relation by compelling him to give an instrument that will have the form and negotiable qualities of a promissory note or a draft, for the convenience of the bankers of the country?

Mr. EVANS. Not at all, sir.

The CHAIRMAN. In order that they may more safely transact their business, which is completely independent of and differing from that of the carrier?

Mr. EVANS. No, sir. When you stated it you asked, Is it necessary under the law for the railroad company to do more than issue the simple plain receipt for the goods? I say it is not necessary, but they do not issue those receipts merely. They do not stop there. They issue a bill of lading, in which they engage to deliver the goods to the order of the party. If the shipment is to John Jones & Co., of New York, they will write a bill of lading, "or order, John Jones & Co., of New York," and they will say specifically these goods will not be delivered until that bill is surrendered.

Now, I say, our association, our bankers, desire this legislation, and not from a selfish view point at all, sir; but in order to promote trade, because in our own section, in the South, the people would be in an embarrassing position in handling the vast cotton crop unless the brokers and agents and men of limited means had some way of facilitating the handling of their goods and of putting them into the hands of a third party to hold for the interests of the consignor. When they fail to do that, when they give us a bill of lading and say they will not deliver these goods until the bill is surrendered they leave a way open by which an honest trader may go to wreck and ruin, and we have those instances frequently.

A case was cited a few minutes ago—at least it was brought to my mind by the citation of another case—where a man representing himself to be the purchaser of scrap iron in a city of our State engaged to open business. He was fairly well introduced, and he stated to the banks that he would open an account with them, and he deposited with the banks bills of lading, and thus obtained credit from them. He came into the bank, with which I was connected, and brought in a bill of lading for a carload of this scrap iron, and desired to obtain the money. Fortunately we placed his instrument on the collection book, which he readily consented to, but he went into another bank and placed the same bills, or at least others like them, to the extent

of $40,000, or something like that, and it turned out that there were no goods shipped.

The bank had to lose the money, and properly lose it, because he had merely forged the bill of lading, and the bank had taken it. But when their own authorized agent undertakes the shipment and delivery of these several articles, and they are placed in the hands and keeping of the railroad company, and the company gives a bill in which they engage not to deliver those goods until that bill is returned, we think that Congress should require that they do that thing; that they be forced to deliver those goods or the value of those goods.

Mr. BURKE. Do you not think that they are required to do so now?

Mr. EVANS. No, sir.

Mr. MANN. When the cotton was loaded, it would be shipped as a carload of cotton, not as so many bales?

Mr. EVANS. It would be shipped as a hundred bales more often, with the actual mark and the weight always indicated.

Mr. MANN. Does that say whether it is sea-island cotton or short-staple cotton?

Mr. EVANS. No, sir.

Mr. MANN. There is a great difference in the value?

Mr. EVANS. Yes.

Mr. MANN. Which would the railroad company be responsible for?

Mr. EVANS. For the load of cotton bearing the marks indicated on the bill of lading.

Mr. MANN. Supposing there was no cotton? You are trying to enact legislation to cover a case where the facts are not the facts, but where imagination takes the place of facts. Which would the railroad company be responsible for? Does it have to guarantee the grade of cotton?

Mr. EVANS. Not at all, sir. We propose an amendment there to relieve them of that.

Mr. MANN. Take the case of a shipment of wheat. It makes a difference whether it is No. 1 hard winter wheat or rejected spring wheat.

Mr. EVANS. That is settled at the elevator.

Mr. MANN. The railroad company has nothing to do with the elevator.

Mr. EVANS. Yes. They know what grade of wheat they take from the elevator—what number it is.

Mr. STEVENS. The receipt shows?

Mr. EVANS. Yes.

Mr. BURKE. In the scrap iron case that you mentioned——

Mr. BURKE. The bill of lading may show in some cases, but there would be cases where it would not show?

Mr. EVANS. Yes. There is such diversity between the bills of lading that we want some uniformity.

Mr. MANN. Would the railroad company be required to show whether it was hard winter wheat No. 1 or spring wheat rejected?

Mr. EVANS. No, sir.

Mr. MANN. In your bill you say they would be required.

Mr. EVANS. No, sir. We have an amendment which relieves that. The amendment covers that.

Now, gentlemen, let us look at it in this way: You know the difficulty we did have throughout the United States in the matter of

negotiable instruments before that excellent legislation went into effect—the negotiable-instrument law. It imposed no hardships, and it has facilitated banking and facilitated business and, as I think, every banker in this House will agree with me that it had that effect, not with the banks alone, but with the individuals and communities.

The same question has now come up here in regard to these bills of lading. Some of my friends from the South seem to think this is a measure in the interest of the banks. It is not so, gentlemen, at all, because, you know, ordinarily our interests are a matter of exchange. Very often, in the South particularly, we will get a bill of lading shipment for 500 bales of cotton, and it will be in our custody only three or four days, and it becomes a question of exchange, in some instances one-eighth of 1 per cent only, for the collection of the drafts.

We can very easily say: "We are afraid of your bills of lading. We will not take them. We will not advance the money. We will place them on our collection book, and when we get the money we will hand it over to you." Suppose the banks of the South say: "We are afraid of that bill of lading?" It has been tested time and time again that when the goods are fraudulently shipped the banks have to suffer for it. Suppose we say: "We will give you no credit on this bill until it is collected." It does not affect the bank, but it affects the town and community and the farmers who have their cotton to market; and that is what we are seeking, not to antagonize the railroad companies, but to promote safe business. I have not heard them express themselves, but I believe they would favor it. We want to get a uniform bill of lading, some simple and plain and enforceable honest contract that we can rely upon.

Mr. BURKE. In the case of the scrap-iron incident that you pointed out would it not be possible for the bank that advanced the money on these bills to ascertain whether the bills were spurious?

Mr. TOWNSEND. He said the bank would have to lose.

Mr. EVANS. Yes; the bank lost, and no question was raised.

Mr. BURKE. It was stated that one reason for this legislation was because the goods are delivered and the bill of lading is afterwards negotiated. If the bank has any doubt about it, would it be impracticable to ascertain without any difficulty that those goods were delivered?

Mr. EVANS. You must remember the bank had no doubt about it.

Mr. BURKE. If a bank advances money on cotton out in a plantation, if you advanced money on such cotton, you are not going to loan the owner money on that cotton if you have any doubt as to his really having it?

Mr. EVANS. Not at all.

Mr. BURKE. Then, if you have any doubt about the property having been delivered where there is a bill of lading, is it not practicable to ascertain that fact?

Mr. EVANS. Yes, sir.

Mr. BURKE. Is not this business done right in the place where the shipment is made?

Mr. EVANS. No; it may be done at Charlotte, Charleston, Savannah, and also at Wilmington. We had one man who shipped about 18,000,000 pounds of cotton. These bills of lading came from all

around there. We can not undertake to ascertain whether those bills were regularly issued and the goods started. It is a measure of confidence.

You ask, Is it not the bank's business to be sure that they are dealing with a reliable man? It is a reliable man in this matter of cotton that generally "touches" the bank. We will handle thousands of bales of cotton, and a man goes into speculation and finds some bills of lading which the railroad company failed to take up, and as a last recourse in his desperation he takes these bills of lading and goes to the banker, who has confidence in him and with whom he has had dealings before, and he turns them into the bank and the bank pays him the value and loses the money.

Mr. BURKE. If the bill of lading appears to have been altered, ought not a bank to be charged with notice of the fact that there was an alteration there that might relieve the carrier of liability that otherwise he would be responsible for?

Mr. EVANS. It would do so, except for the fact that for years and years they have done nothing else than alter the great majority of them.

Mr. TOWNSEND. They have a provision on the back as to that, have they not?

Mr. EVANS. That is right.

Mr. TOWNSEND. Now, as a railroad man and banker, how would this affect carriers? Would it put them to extra expense and loss if they were obliged to do business in a business way instead of by the methods by which they have been doing it heretofore?

Mr. EVANS. Not at all. You gentlemen like practical ideas about these things, I suppose. I will cite you a case that happened three weeks ago, in which a carload of peanuts was shipped by a Wilmington brokerage concern to a party in Georgia. A man went into a bank and got money from the bank, $700, on the bill of lading. The goods went there. The goods went direct, and the bill of lading with the draft did not get in until the goods had been in town several days. The merchant was very anxious to obtain the peanuts, so he went over to the agent and said, "I have not the bill of lading for this carload of peanuts which has arrived, but I am very anxious to get the goods, and now let me have them and I will bring the bill of lading when the draft comes. I do not know where the draft is. It has not come."

So the peanuts were delivered, and subsequently, in four or five days, the draft came in with the bill of lading, and the merchant discovered that the peanuts were not satisfactory—were not up to the grade that he had contracted for; and thereupon he refused to pay the draft, and it came back to Wilmington with the bill of lading attached. It was an irresponsible shipper, and the bank had to look to that bill of lading for its money. So they go down to the railroad company and they inquire, and the railroad company reports the delivery of the goods, and the bank shows the bill of lading. Now, that money, if it has been recovered, has been recovered since I came to Washington, and I know that the railroad company had declined to pay it over. They say the agent delivered the goods without authority, and it was not a negotiable bill of lading: and there they are.

Mr. MANN. Do you not think the bank was a little negligent to loan money in the first place to an irresponsible shipper for peanuts, and then wait a week for the bill of lading?

Mr. EVANS. That depends on how quickly the shipper brought the bill of lading in. The goods had gone before he drew the draft. That was not the bank's fault.

Mr. MANN. If the shipper brought in the bill of lading four or five days after the goods had been shipped—an irresponsible shipper—the bank ought to have made inquiry.

Mr. EVANS. When I said "irresponsible," I did not mean irresponsible in the sense you understand. The man was a man of good character, and was not attempting any sort of fraud, or anything of that kind. When I say "irresponsible," I mean they could not have made the money out of him by law. He did not have it. He was merely a broker. He was a man of good character, however, and of good standing in the community.

Mr. STEVENS. The amendment here would warrant it?

Mr. EVANS. Not the quality.

Mr. STEVENS. Whether they were good or bad peanuts?

Mr. EVANS. No. The bank would have to look to the shipper for the difference.

Mr. MANN. The bank, having delivered the peanuts without a bill of lading, would have to pay the value of the peanuts represented by the bill of lading?

Mr. EVANS. No. On the amendment which we propose, it says that the value of the peanuts when received——

Mr. MANN. That is what I say. The railroad would have to pay for the peanuts.

Mr. EVANS. Not the amount of the draft, but the value of the peanuts when received.

Mr. MANN. A little more than the draft?

Mr. EVANS. More or less than the exact amount.

Mr. MANN. If it were good banking it would be a little more. [Laughter.]

Mr. BURKE. Suppose the peanuts turned out to be bad?

Mr. GAINES. I do not suppose you want the railroad company to guarantee the amount or quality of stuff shipped?

Mr. EVANS. Oh, yes. They will not take a carload unless they pay by weight.

Mr. GAINES. I know; but take a man in the lumber business at some small station. A box car will be put off, and the owner of the lumber and the purchaser will get on that pile of lumber and grade it and measure it. Now, the station agent does not stand there and watch that, because he could not. He is neither an expert grader of lumber nor does he know how to measure it. Of course the railroad company knows that the person buying is not going to allow for more lumber than goes into the car, but if the railroad company were responsible for the amount, they would have to have their lumber measurer there. The railroad company's agent does not measure.

Mr. EVANS. He states so on his bill of lading.

Mr. GAINES. But he takes, and must take, the measurement of these two men.

Mr. EVANS. He checks them.

Mr. GAINES. The protection of the railroad company is this, that the man buying is not going to allow for more than is there, because when he gets to the other end he becomes the seller, and somebody else is going to check off the amount; but if the railroad company is responsible for the amount that goes in there, they would have to be careful to protect that measurement.

Mr. EVANS. I am glad you asked that question, because I am right in a section where we are shipping quantities of pine, as you know, to Pittsburg and Philadelphia and New York, and the railroad company checks up the number of feet in each carload, and they state the number of feet in their bill of lading.

Mr. GAINES. When you say it "checks up," I do not understand it.

Mr. EVANS. They satisfy themselves that it is there.

Mr. GAINES. Their agent does not measure the lumber.

Mr. EVANS. I think you are mistaken.

Mr. GAINES. As I understand it, they generally do not, because, as a rule, the station agent could not take this measuring scale and go on the car and measure it up.

Mr. INGLE. May I answer that?

Mr. EVANS. Yes; certainly.

Mr. INGLE. In getting carloads of lumber, you understand, Mr. Gaines, and in loads of miscellaneous products of one kind and another, where the description in a bill of lading is more or less indefinite, we must, of course, rely upon our customers' statements, and when we are more or less doubtful we will ask them to bring their invoices in. We are in their hands to that extent. If they bring in a false invoice on a carload of lumber, or a carload of apple waste, or odds and ends which are not staples, if you choose, we are in their hands. If they misrepresent things to us, all we can recover from the railroad is the value of that lumber. That is determinable easily enough by testimony between the shipper and the railroads at the time of the shipment. Is that right?

Mr. EVANS. Yes.

Mr. BARTLETT. You spoke a while ago of a spent bill. Is it not a fact if a man comes into a bank with a spent bill of lading that you would inquire into that, exercising ordinary care as to its character, and inquire why it was not used before?

Mr. INGLE. We never accept as collateral a bill having the appearance of a spent bill. But take an altered bill, which may have been altered a week or two months, but when brought into us it bears a date near the time of presentation——

Mr. BARTLETT. Forged?

Mr. INGLE. Yes; forged by somebody.

Mr. BARTLETT. Take a note due day before yesterday, but by some means the holder of the note has changed the note so as to make it the next week. You think you get a note not due, and therefore not subject to the equities between the parties?

Mr. INGLE. We do not dare to take a note of that kind, because the alteration releases the indorsers. But in the case of bills of lading the alteration is a common matter and is done deliberately by the carriers themselves in many instances, and their own regulations provide for such alterations.

Mr. EVANS. Take the towns that handle cotton. Go down to your

banks, and I am sure you will find away up into September occasionally some bills of lading dated July.

Mr. TOWNSEND. Is there anything further you want to say?

Mr. EVANS. Nothing, sir.

Mr. TOWNSEND. Then, Mr. Chairman, I will ask Mr. Aplin to speak. Give us your full name.

Mr. APLIN. My name is F. A. Aplin, of New York.

The CHAIRMAN. Let him proceed.

STATEMENT OF MR. F. A. APLIN, OF NEW YORK, VICE-PRESIDENT OF THE J. K. ARMSPY COMPANY.

Mr. APLIN. I am vice-president of the J. K. Armspy Company, of New York. I handle their interests in New York City and that territory.

I had no idea that I would be asked to say anything here, but as I happen apparently to represent two interests—we are manufacturers and commission merchants at the same time—the question that you have under discussion is of vital importance, in my mind, to the general commercial interests of the whole country. There has been nothing mentioned except cotton and possibly grain——

Mr. BARTLETT. And gopher's peas. [Laughter.]

Mr. APLIN. I speak particularly in the interest of fruit and salmon and the products of California. The source of supply is a long way from the markets, and it is almost, I might say, absolutely necessary that the system of the bill-of-lading collateral shall be fortified, shall be made good. It is almost necessary for the far western shippers to be able to finance his business at a critical time, and that is during the fall months. We have ample capital to handle the business of a large organization for the ordinary daily and monthly wants, but during the fall months, when perhaps 80 per cent—I think I do not overestimate it when I say 80 per cent—of the capital necessary to carry 12,000,000 of shipments that we make comes within ninety days, you can readily see that money becomes necessary.

We take the product from the farmer, from the producer, into our manufacturing plant and we immediately prepare it for market. When we move the goods from the factory—this is where we are manufacturers that I speak of now—we ship to every jobbing point in the United States the products of those factories. We start a car from San Jose, from Ventura, or San Francisco, or wherever the point may be, and we immediately finance it. It would take a larger capital than our line of business has to do it otherwise. In a majority of cases these sales are made payable on arrival and examination at the point of destination. Our bills of lading under the present system of the railroads are accepted without question.

The CHAIRMAN. That is, by the local bankers?

Mr. APLIN. Yes; by the local bankers. They accept our bills of lading very largely with the understanding or fact attached that it is single-name paper, as you may say. We indorse them. Our goods start and go all along the line through to New York State and every State in the Union. On arrival at destination the bank at that point generally holds the paper, it having gone through the channels and reached it. We find in a majority of cases that our drafts are paid with the bill of lading attached, and the goods are delivered upon

presentation of the bill of lading. But in many instances the goods are delivered without the bill of lading——

Mr. PIERSON. By the railroads?

Mr. APLIN. Yes; during the three rush months, the fall months. I presume that during that period I have had ten bills of lading returned to my office as not having been surrendered to the railroads, and had I been disposed I could have cashed to my friend, Mr. Pierson, the banker, those bills, and he would very readily have given me the value of them in money.

I want to emphasize the point that has been raised here, can business be done without a banker? I do not believe that it can.

The CHAIRMAN. Allow me to ask you right there, if it will not interrupt you——

Mr. APLIN. Yes——

The CHAIRMAN. What was the condition as to those ten bills of lading returned to you?

Mr. APLIN. The goods had been delivered to the point of destination, and the bills of lading had not been asked for.

The CHAIRMAN. They were returned by the bank?

Mr. APLIN. Yes; they were returned by the bank to us.

The CHAIRMAN. What had become of the draft accompanying that bill of lading?

Mr. APLIN. That had been paid in every instance, I think.

The CHAIRMAN. What was the result of that transaction between that bank and the person who received that property?

Mr. APLIN. I was going to answer that that was not easy for me to answer, because in the majority of cases those bills of lading originate at our San Francisco end. We have sought for years to make the bill of lading a valuable collateral.

The CHAIRMAN. Was there any indorsement on that bill of lading when it was returned to you?

Mr. APLIN. None.

The CHAIRMAN. None at all?

Mr. APLIN. None at all.

The CHAIRMAN. Nothing to indicate that it had been in any other hands——

Mr. APLIN. No, sir.

The CHAIRMAN (continuing). Than the gentleman's to whom you delivered it?

Mr. APLIN. No, sir.

The CHAIRMAN. Was it returned to you through that bank?

Mr. APLIN. I would not answer that question; I could not answer that question; I could not answer that question definitely; no, sir. I have a case in point at Elmira, N. Y., that will illustrate that. It will not illustrate that point exactly. We shipped a car of goods to a reputable firm there, and they were not shipped exactly as ordered. I was asked to adjust the question, and before I could adjust it really we found that the goods had been delivered; the draft had been paid. The bill of lading had not been surrendered; and that went on for about sixty days, if I remember it right, when the man finally took the paper up, and I presume surrendered the bill of lading.

Mr. STEVENS. As I understand, when the bill of lading is not surrendered it is because the shipper wants the goods at his own time and in his own time, and the railroad company is complacent about it?

Mr. APLIN. That is right, sir.

Mr. STEVENS. How much inconvenience would be caused to the trade in various portions of the United States by stopping that practice entirely?

Mr. APLIN. None; none.

Mr. STEVENS. And requiring the surrendering of the bill of lading in order to secure the delivery of the goods. In the case of perishable goods, such as fruit and berries and things of that kind, would it cause any inconvenience?

Mr. APLIN. I do not understand how they handle fresh fruits at all. In our business there would be no inconvenience at all, because our business is naturally along the draft line entirely.

Mr. STEVENS. And the bill of lading could be required to be surrendered without any inconvenience?

Mr. APLIN. The bill of lading could be required to be surrendered without any inconvenience—none whatever.

The CHAIRMAN. Suppose the consignment was of perishable goods, such as fruit, and the bill should be lost in the mail: would there not be inconvenience then?

Mr. APLIN. We had that question. I think the purchaser would immediately issue a bond of indemnity, and that would protect his interests.

The CHAIRMAN. Could that be done if the law prohibited the surrender of the goods without the surrender of the bill of lading?

Mr. APLIN. That is a point of law that I can not discuss.

Mr. STEVENS. It is something that ought to be discussed?

Mr. APLIN. Yes, sir; but I am not competent to discuss it.

Mr. BARTLETT. Do you not think in case of a bill of lading that would cause anything to be delivered at any distance, that if you would wire the railroad authorities that a certain carload of goods mentioned in that bill of lading was your property and had been transferred to you, and the railroad, in spite of that notice, were to deliver it to the persons, there would be some liability on the railroad without the bill of lading?

Mr. APLIN. I should think so.

Mr. BARTLETT. Yes.

Mr. APLIN. I should think so. The question was also up for discussion here a moment ago as to the responsibility of the agent, and as to the count that goes into the car. We frequently have bills of lading that read, across their face, "shipper's count." We have never had any trouble on that with the banks at all. I think out of more than 300 cars that I have handled through my office this past season not one single car has been short in count. Every car has been counted—so many bags, so many boxes, so many cases of this, that, and the other. I think, without a single exception, the count has been correct. At the time of delivery they sometimes report a short case or two, but before they make their payment of the claim, which we immediately put in upon it, they find what is missing.

Mr. MANN. Does the railway company always make a count?

Mr. APLIN. I do not think so.

Mr. STEVENS. At the time you ship the goods?

Mr. APLIN. No, sir; I do not think so. They take our count. I think they take our count.

Mr. STEVENS. Your freight is paid by weight, is it not?
Mr. APLIN. Yes, sir.
Mr. STEVENS. It is not paid by count?
Mr. APLIN. No, sir; not by count.
Mr. STEVENS. And the weight is noted on the bill?
Mr. APLIN. As a rule; yes, sir.
Mr. MANN. How does the bill of lading read—a carload?
Mr. APLIN. Five hundred cases, or 1,000 cases, and so on.
Mr. MANN. Under this bill the railroad company would be required to count these cases as they went in the car?
Mr. APLIN. I should say not. I am not sure about that.
Mr. MANN. They would be liable——
Mr. BARTLETT. If they did not count it?
Mr. MANN. They would be obliged to count it or take your word for it.
Mr. APLIN. Yes; the same as they do now.
Mr. MANN. But there might be some one else whose word would not be good, so that in practice, to save themselves, they would have to make a count?
Mr. APLIN. Yes, sir.
Mr. MANN. Would that interfere in any way with the handling of goods and loading the cars?
Mr. APLIN. Not in my judgment.
Mr. MANN. They would have to be present when the cars were unloaded also.
Mr. APLIN. They always take the receipts for count—almost always.
Mr. MANN. They take the statement of the consignee?
Mr. APLIN. Yes.
Mr. MANN. But if they are responsible for the number of cases, they would have to count them in and count them out.
Mr. APLIN. That is their system.
Mr. TOWNSEND. That is the way they do now?
Mr. MANN. He says that is the way they do in his case.
Mr. APLIN. No, sir; I say that frequently the cars are taken and the bills of lading read "shipper's count," and I have no doubt that frequently cars are loaded where the actual count is not taken by an employee of the railroad company.
Mr. MANN. Do you load on side tracks of your own?
Mr. APLIN. Yes; in many instances; and in other instances we load on other tracks.
Mr. MANN. I mean side tracks of your own?
Mr. APLIN. You mean side tracks up to the factory?
Mr. MANN. Yes.
Mr. APLIN. A spur?
Mr. MANN. Yes.
Mr. APLIN. Yes, sir. Just one more point, and that is this, that if it helps the people to move their goods, making a bill of lading that is without question, then every bank will be eager and looking for that sort of security. As it is, we have more or less a monopoly. There are only some banks that want these things. And I have been declined by banks in New York City, who positively will not accept the present style of bill of lading as collateral.

STATEMENT OF MR. CHARLES CORBY, OF NEW YORK CITY, N. Y., IN THE WHOLESALE COMMISSION BUSINESS.

Mr. CORBY. Mr. Chairman and gentlemen of the committee, I do not know that there is anything that I can add to what has been said before by those who have preceded me. It looks to me as though this is very largely a matter of law, so far as the bill of lading is concerned. I have been identified with the shipping business for a number of years on the Atlantic seaboard and in Chicago and on the Pacific coast.

I realize just as fully as any man engaged in business can that the business of this country—and particularly of the West, and possibly of the South—could not be conducted properly if the people who raised the products did not have the facilities afforded them by banks of raising money on bills of lading. It looks to me as though it was a question of one thing. The railroads as now constituted issue two bills of lading—what is known as a straight bill of lading, for which the railroad assumes no responsibility other than the fact that it takes the goods to transport them to a certain point and deliver them upon the payment of charges to the consignee—on the other hand, they issue what is known as an order bill of lading. In other words, the shipper takes the bill of lading to the order of himself and notifies the consignee. When that shipment arrives at its destination the railroad company is supposed under that order bill of lading not to make any delivery of the property contained therein except upon the presentation and surrender of that bill of lading.

Mr. BARTLETT. That is the obligation, is it not?

Mr. CORBY. Yes, sir. Now, it seems to me, so far as crystalizing that into law is concerned, that there is no reason why there should not, in the interests of business, be a national law enacted that would not work a hardship to the railroad companies, but would be a certain source of safety to those who are lending money against the products of the land.

There is no doubt of one thing. There is a deep-seated feeling of distrust in the community, arising out of the fact that a number of the States have construed the statutes now existing differently. I remember a case in point, a number of years ago, where goods were shipped to order, and the parties were notified, in the city of Chicago, and they were in very good standing at the time, and they had a bond with the Rock Island Railroad. The goods came to hand in due course, and instead of taking up these bills of lading they delivered the goods under the bond. The parties afterwards hypothecated the bills of lading and raised money on them, and the railroad company was sued, and a judgment given against the railroad company.

On the other hand, the same transaction has occurred in other States where a different construction has been put upon it. There seems to be a crying need of some legislation on the part of the National Legislature, so that all would be safeguarded. The railroad companies are now making fish of one and flesh of another; or, in other words, they are issuing an order bill of lading which distinctly states that the goods under that bill of lading shall only be delivered upon presentation and surrender of the bill of lading, and in a number of cases they have running accounts with parties to whom they

deliver those goods without the surrender of the bill of lading, thereby doing injustice to the shippers and rendering themselves liable to action, and at the same time placing the shipper in a position where it seems to me he is compelled, to obtain his rights, to enter suit.

Mr. STEVENS. Is not that the same with everybody as to rights; you have to go to the courts to enforce them?

Mr. CORBY. Yes; I understand that, but if there was a national law it would obviate a number of difficulties that they are working under now.

Mr. STEVENS. Is not the discrimination between the State and its laws rather than as to the railroad company? That is, Illinois would enforce that obligation and New York would not?

Mr. CORBY. I do not know as to that.

Mr. BARTLETT. If the courts of the United States had a different rule about that it would prevent the shipper, in case the amount was insufficient, from going into the United States court to collect his debt from the railroad?

Mr. CORBY. No, sir.

Mr. BARTLETT. As I understand it, the Supreme Court of the United States has decided in a number of cases that a bill of lading transfers title to the property, and must be delivered to the person who is entitled to the property.

Mr. MANN. Might not the power of the railway company, now, to issue or not to issue a negotiable bill of lading, make quite a difference as a preference given to one shipper as over another?

Mr. CORBY. No; I think not. Anyone can now get an order bill of lading by asking for it.

Mr. MANN. The railroad company makes no distinction about it at all?

Mr. CORBY. Not that I know of. I have been in business on the coast, a rather large concern, where we ship, probably, up to a thousand carloads a year, and never in any instance was there a refusal on the part of the railroad company to issue a bill of lading—an order bill of lading.

Mr. STEVENS. Might not the willingness of a railroad company to deliver carloads without a bill of lading to one and not to another be a preference?

Mr. BARTLETT. A discrimination?

Mr. STEVENS. Yes; a discrimination.

Mr. CORBY. If a railroad company issues an order bill of lading, they have no right to deliver those goods without the surrender of the bill of lading.

Mr. STEVENS. But you say they do?

Mr. CORBY. Yes, sir.

Mr. STEVENS. You say they have a list of people with whom they run accounts?

Mr. CORBY. All the railroads in large places have a credit list, upon which those who are in good standing are placed.

Mr. STEVENS. Can those on the credit list obtain the delivery of goods without the surrender of the bill of lading?

Mr. CORBY. I do not know as to that.

Mr. MANN. The railroad company now issues an order bill of lading to anybody who asks for it, and marks on it "nonnegotiable?"

Mr. CORBY. Yes, sir.

Mr. MANN. The bankers say that affects the value of the bill of lading as a collateral security.

Mr. CORBY. There is no question about that.

Mr. MANN. A shipper who can get a negotiable bill of lading has some advantage over one who can not get such a bill, has he not?

Mr. CORBY. As I understand it, he can not get a negotiable bill of lading.

Mr. MANN. You say they can not; they do not?

Mr. CORBY. No, sir; they do not.

Mr. MANN. But if the railroad company desires to give a preference to A in a town over B in that town, both men dealing in the same article. Heretofore they have given that preference by rebates or some other preferences of that sort. Now, that being forbidden by law, can they not give a negotiable bill of lading to A and refuse to give a negotiable bill of lading to B, and thereby give A a preference over B?

Mr. CORBY. I suppose they could.

Mr. MANN. If they could, then it is covered by the Hepburn bill, under which the Interstate Commerce Commission will regulate it when it becomes a law.

Mr. CORBY. That would be a legal point. I do not know of any instance where that has occurred.

Mr. MANN. It may not have occurred, but it might easily occur.

Mr. CORBY. There was something said about the checking of goods on the part of railroad companies. My experience has led me to believe that they check everything. You take all those points on the Pacific coast and on the British Columbia lines, and at the small stations where the lumber is shipped from, all those cars are checked; so that the railroad company has surrounded itself with every safeguard and is responsible for shortages, unless they issue a "shipper's count" bill of lading, which relieves the railroad company from any responsibility as to quantity.

On the other hand, if it is a regular bill of lading and they take a receipt for 500 cases of canned fruit or 500 cases of salmon or 500 bags of beans, they are supposed to deliver the quantity specified and the quality called for in that bill of lading, and in case of their failure to do so at the arrival of the goods there is a claim made against the railroad company, and if it can be proven that those goods were lost in transit the carrier is responsible.

Mr. BARTLETT. All you have to do is to show the bill of lading, that the specified amount of the salmon or the beans is named, and the railroad company would have to say that they did not receive them——

Mr. CORBY. The statement has been made that they did not check into the cars. As a matter of fact, in my experience the railroad companies always check into the cars, even cars of assorted freight. On the Pacific coast—I have more intimate knowledge of that than anywhere else—they check everything, even in making up assorted cars. They place these goods in certain parts of the warehouses, and check into the cars, and take the checker's receipt before the waybill is made up.

Mr. STEVENS. Do you know anything about the handling of perishable goods, fruit and berries and things like that?

Mr. CORBY. Only in a general way.

Mr. STEVENS. As to the practicability of requiring the surrender of bills of lading when those goods are received?

Mr. CORBY. I have no knowledge of the perishable-goods business at all. I do not know that there is anything further I can say, except that I believe it is in the interests of the business community, as it so largely depends for the moving of the products on the assistance of the banks, that there should be a bill framed to meet the present demands, and I believe such a bill could be framed, and I do not believe as a matter of fact the railroad companies would object to it, as they are now issuing a bill of lading similar to that called for.

Mr. STEVENS. They do not make any extra charge where an order bill of lading is issued?

Mr. CORBY. No, sir: the rate is the same. The bill of lading has nothing to do with that.

Mr. GAINES. Has this whole subject-matter been submitted to any of the railroad people?

Mr. CORBY. I do not know.

Mr. BARTLETT. Just one other question. If a bill should simply provide that all bills of lading issued for the transportation of interstate freight, or whatever it is, should be negotiable, notwithstanding any words on the face of the bill of lading to the contrary, would not that answer your demands?

Mr. CORBY. I do not quite grasp that.

Mr. BARTLETT. I say if this bill or any bill like it should simply provide that all bills of lading hereafter issued by a railroad company which should issue bills of lading for the transportation of freight in the interstate business should be negotiable, notwithstanding any words to the contrary in any such bill of lading, would not that answer your purpose?

Mr. CORBY. I do not know. I think some of the bankers might answer on that.

Mr. PATON. The trouble is that with such a law as that we would have too many conflicting decisions in the courts of the different States.

Mr. TOWNSEND. I am informed that certain representatives of the railroads and of the shippers have been discussing this question to-day and have talked with certain of the bankers here, recognizing, as I think they all do, the fact that it is to their interest to get together if they can, and they have agreed that there should be a delay, and that they should get together, possibly, and frame it up and make some amendments to this bill, or make a new bill that would be satisfactory to all interests concerned. They have asked that this matter be postponed for a sufficient length of time for them to get together and talk it over and see if they can agree on the preparation of a bill that would be satisfactory to them and also satisfactory to us, when it is brought here, so that if we could take an adjournment of this matter, say, for two weeks, they would have time to complete the negotiations with the shippers and the railroads.

STATEMENT OF MR. B. D. CALDWELL, VICE-PRESIDENT OF THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY.

Mr. CALDWELL. In my official capacity as representing the railroads, Mr. Chairman, and as acting chairman of the bill of lading committee, in the absence of the chairman, who is ill——

Mr. TOWNSEND. That is the official classification?

Mr. CALDWELL. Yes, sir; the bill of lading committee of the official classification territory. Briefly, for a good while the railroad companies and the shippers have felt that changes could be made in the bill of lading to the advantage of both parties.

For eighteen months a committee of representative shippers, at their instance and on the advice and recommendation of the interstate-commerce committee, have been in conference with the bill of lading committee, trying to make such changes in the bill of lading as would meet the interests of the shippers and the railroads. It is perfectly clear that the time has come in the tremendous increase in the business of this country to make some changes, and the railroad companies recognize that, and in their negotiations with the committee of shippers they made a great many concessions to the shippers' wishes. About two weeks ago a meeting was held between those two committees at which there was almost an agreement reached.

Another meeting is to be held within two weeks, at which undoubtedly an agreement will be reached, or there will be a failure to agree. About three months ago the bankers' committee—possibly longer than that—was formed, as I understand it, after they found that the committee of shippers were negotiating with the railroads. They asked to be permitted to be made a party to those negotiations. The shippers' committee in the origin of the negotiations insisted that no others should be admitted, on the ground that they had taken the matter up and desired to deal with it, and it is manifest (at least they had so represented), had representatives of all the bodies in this country been admitted it would have become a town meeting.

The railroad companies at that time felt that it would have been wise at that time to have had representatives from the other bodies, especially the bankers. But the shippers' committee thought that it was inadvisable. For that reason, when the bankers' committee came asking to be admitted it was found impossible to admit them. Notwithstanding that, they called a meeting at Lakewood, where we were in conference with others, and the conditions of courtesy were such that we did meet them informally and discussed these matters with them. We stated that we were in accord with their contentions, substantially; that there should be made a change as to the order bill of lading, but that we were not in condition to definitely enter into relations with them, because we were under obligations to the shippers, and as soon as our negotiations with them were concluded either favorably or otherwise, we would be very glad to meet them, in the hope of reaching an agreement.

Notwithstanding that, the bankers came to us some weeks ago stating that they had a bill which they proposed to introduce in Congress, and unless we could at that time enter into an agreement as a committee with them, they would proceed to do so. We restated our

position, and stated that it was unfair for them to follow that course of procedure; that it was precipitate and unwise, and would not accomplish such a good result as if we entered into negotiations, our belief being that we could reach an agreement.

Now, the present situation is this: At the end of two weeks, either on April 4 or on April 7, there is to be another meeting of the shippers. As I have stated, that will probably mean an agreement.

That agreement will simply mean that our committee on the bill of lading will make recommendations to the railroads, who will make recommendations to their principals—the various bodies whom they represent. It is the purpose of the railroad companies—and we have so stated to the bankers—that if this agreement is reached at this meeting we will say to the shippers that we deem it of the utmost importance that we shall be then in a position to confer with the bankers, in the hope of reaching an understanding that will bring about a situation whereby we can come to Congress all together and ask Congress to enact some legislation which will give us some ground under our feet, as against the discrepancies that exist to-day in the different State legislation.

Our feeling is that the bankers have been precipitate in coming to you in this matter, and our suggestion to them this morning was that we thought it would be wise—that we thought they had proceeded in this hearing in good faith with you—that we might postpone these proceedings, so that we might be in a position to deal with them in the open and without feeling and without bias, our feeling being that it would hardly be possible for them to deal with them by negotiation and the right result be reached if they were in the position of demanding of Congress legislation on certain lines, and holding that over our heads and saying: "You must come to this."

Our interest in this matter is probably greater than that of the bankers. The changes of the bill of lading which will be brought about if we succeed in our negotiations with the shippers are a thousandfold more important than these questions which are brought up by the bankers, because they have to deal with the question of liability. They have to deal with the questions of prompt payment of claims of the shippers, questions which you know—especially that of liability—are very much deeper seated and much more important in their effect upon the shippers of this country than this question.

Our feeling is, again speaking frankly, that in a general way the bankers themselves are responsible for the conditions that exist to-day with respect to their losses, in that their loans have been made to their patrons on the personality of the patron rather than upon merit of the guaranty that they have as to the property; and to a certain extent the bankers are responsible for the fact that these bills of lading have become accepted with more or less changes made in them. Most of the bills of lading are made out by the shipper, who brings them to the agent to sign. Most of the changes are made by the shipper, and, as a matter of fact, some of the banks—some have not—have been taking these bills of lading and taking their chances. Undoubtedly there have been some losses, but I think if you got the facts you would find that it had been a very small per cent.

Now, we would like to help them so that they would not have any losses. We would like to do all that we can, because we are interested

in promoting in every way the commercial development of the country. It is our bread and meat. I think in a general way that states the case from our standpoint, Mr. Chairman.

Mr. MANN. What is the shippers' committee?

Mr. CALDWELL. It is a self-constituted committee, whose attorney is Levy Maher, of Chicago, who took up this question about a year and a half ago.

Mr. MANN. That was at the time you were going to put a uniform bill of lading forward?

Mr. CALDWELL. At the time there was a change in the classification. They raised the question as to these two sets of receipts, the shipper's risk, and other points, and they went to the Interstate Commerce Commission protesting against the issuance of this classification. That resulted in a hearing before the Commission, and a recommendation of the Commission that the best way to get results would be for the shippers and the carriers to get together and see if they could not work this matter out. The shippers' committee, although self-constituted, is a very representative one. I think a member of this body, Hon. Martin B. Madden, is a member of it, and I am very happy to say that they have all through conducted the meetings rather in the interest of the shippers than in their own interests.

Mr. MANN. The shippers' committee, drawn together at the invitation of the Illinois Manufacturers' Association, embraces the shippers' associations throughout the country?

Mr. CALDWELL. That is right.

Mr. MANN. And you think you will be able to come to an agreement?

Mr. CALDWELL. Well, I would say——

Mr. MANN. I do not want to bind you by any statement.

Mr. CALDWELL. I think it would be fair to put it just as I have—that, in our opinion, we will at our next meeting either reach an agreement, to which we are exceedingly close, or else a failure to reach an agreement.

Mr. MANN. The current newspapers stated the other day that you had reached an agreement upon everything but one point.

Mr. CALDWELL. That is substantially true. There are 12 points covered in the bill of lading, and I think on 10 of them there is an agreement, and there is substantially only one point upon which an agreement has not been reached.

Mr. STEVENS. If no agreement is reached between the railroads and the shippers' committee, you would wish to be heard in respect to this matter when it is taken up again?

Mr. CALDWELL. We assume that you would give us an opportunity to be heard. We do not ask that now. Our suggestion to the bankers was that as soon as we were free from our present obligation to the shippers we would proceed with these negotiations and take up the bankers' or any other question as to the bill of lading. If we come to an agreement with the shippers there is no question we will be glad to deal with the bankers immediately. If we deal with the shippers there is no reason why we should not, then, so far as the bankers are concerned, enter into negotiations which we hope will adjust these matters.

Mr. MANN. If you fail with the shippers, do you not think you will have a hearing here on that subject?

Mr. CALDWELL. Well, I do not know. I think probably the shippers, having put their hand to the plow in this matter, will probably feel that in some fair, wise way they ought to try to reach a conclusion as to this bill-of-lading matter.

Mr. MANN. If they come to a conclusion with you they probably would want to come to Congress?

Mr. CALDWELL. I think perhaps you gentlemen are as well able to answer that question as I am.

Mr. TOWNSEND. We will not put this matter off indefinitely. It will be called up again——

The CHAIRMAN. I thought probably there were gentlemen present here on behalf of the bankers who might want to be heard now, who would want to go away. We might hear them to-morrow, just to suit their convenience, and then postpone further hearings on the subject until some such time as we could hear from this probable agreement.

Mr. CALDWELL. Let me state once more our attitude as to the bill of lading. We think that we ought to be in a position in dealing with the bankers' committee to deal in an absolutely unprejudiced way, and our feeling is that until we should be in a position to do that we should suspend these proceedings.

As I understand it, this is a committee hearing, and the bill has not been reported, and this is simply a suggestion, and if in a reasonable time we should fail to make progress in our negotiations the shippers would come right back to you.

Mr. RYAN. I am in receipt of a telegram from the president of the Chamber of Commerce of Buffalo, who desires also to be heard.

STATEMENT OF MR. LOUIS E. PEARSON, PRESIDENT OF THE NEW YORK NATIONAL EXCHANGE BANK.

Mr. PEARSON. Mr. Chairman, I just simply wish to say a word, and that is to the effect that the bankers at no stage of the negotiations, or attempted negotiations, with the railroads have had in mind asking from them anything which would in any way be construed by anybody as being unfair. We even sent to them copies of our proposed bill in advance, inviting their comments, some few weeks ago.

In answer to the point that we have been rather hasty in our action, I would say that it is only within the last two or three days that we have had from them suggestions along their own lines which, we believe, it is fair to give to them, looking at it from their standpoint.

Gentlemen, we want to get this thing solved, and we wish to get it solved just as soon as possible. We are perfectly willing to wait any reasonable length of time in an endeavor to have the three interests get together on a proper basis; and I wish to say that it will be entirely agreeable to our committee to have this hearing postponed until that opportunity is presented.

ADDITIONAL STATEMENT OF MR. WILLIAM INGLE.

Mr. INGLE. If you will permit me, Mr. Chairman, I hope I may say this, Mr. Pearson, some railroad people—evidently personally—have expressed themselves as being in entire accord with the particular purpose we expect to serve in this bill. We have a very strong

letter from the president of one of the most powerful and widely known railroads of the country, stating that, with the exception of clause 5—which we have asked to be withdrawn—it is in entire sympathy with the provisions of the bill. That does not possibly mean—although he does not so state—that he would not possibly prefer that these remaining sections should be whipped around into a little more clean-cut shape. But that is a widespread sentiment among the railroad people themselves, that they are ready for some measure of this sort.

Mr. RYAN. It is very probable that you will get together?

Mr. INGLE. Yes, sir; we hope so very much. That has been our one aim, to get together, for the last three or four months.

The CHAIRMAN. Mr. Paton, I suggested to you that we would, at your convenience, have a meeting to-morrow.

Mr. PATON. Yes, sir.

The CHAIRMAN. Do you wish us to carry out that promise?

Mr. PATON. No, sir; I am subject to the will of the committee of bankers. I understand now that the thing will be postponed, if it is agreeable to this committee, until the various interests have had an opportunity to confer.

The CHAIRMAN. Then I would suggest to the committee that we do not postpone this indefinitely, but to a fixed day, say, four weeks from to-day, and make this a special order four weeks from to-day. Without objection, that will be the order.

(There was no objection.)

(Thereupon the committee adjourned.)

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